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Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 553)

Supreme Court of the United States

OCTOBER TERM, 1951

No. 280

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION ET AL., PETITIONERS,

vs.

JUNEAU SPRUCE CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 27, 1951.

CERTIORARI GRANTED OCTOBER 22, 1951.

No. 12527

United States
Court of Appeals
for the Ninth Circuit.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION LOCAL 16,

Appellants,

vs.

JUNEAU SPRUCE CORPORATION, a Corporation,

Appellee.

Transcript of Record
In Three Volumes
Volume I
(Pages 1 to 552)

Appeal from the District Court for the Territory of Alaska
Division Number One

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

GLADSTEIN, ANDERSEN, RESNER & SAWYER,

240 Montgomery Street,
San Francisco, California.

HENRY RODEN and

WILLIAM L. PAUL, JR.,

Juneau, Alaska.

For Appellants.

N. C. BANFIELD of FAULKNER, BANFIELD AND BOOCHEVER,

Juneau, Alaska.

MANLEY B. STRAYER of HART, SPENCER, ROCKWOOD, McCULLOCK AND DAVIES,

1410 Yeon Bldg.,
Portland, Oregon,

For Appellees.

In the District Court for the Territory of Alaska
Division Number One at Juneau

No. 5996-A

JUNEAU SPRUCE CORPORATION, a Corporation,

Plaintiff,

vs.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an Unincorporated Association, and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 16, an Unincorporated Association,

Defendants,

SECOND AMENDED COMPLAINT

Comes now plaintiff and for its cause of action against defendants alleges as follows:

I.

This action arises under the laws of the United States regulating commerce, more particularly under Section 303 of the Labor-Management Relations Act, 1947 (Act of June 23, 1947, c. 120 § 303, 61 Stat. 158, 29 U. S. C. A. (pocket supp.) § 187).

II.

Plaintiff is a corporation organized under the laws of the Territory of Alaska, with its principal place of business at Juneau, Alaska. Plaintiff has

paid to the Territory of Alaska its annual corporation taxes last due and has filed its annual report for the calendar year 1947, as required by the laws of said Territory.

III.

Defendant, International Longshoremen's and Warehousemen's Union, is and at all times herein mentioned was a labor organization, engaged in directing, representing, and acting for its members and local unions in the Territory of Alaska, in the Province of British Columbia, Dominion of Canada, and in various ports of the West Coast of the United States, to wit, in ports in the States of Washington, Oregon and California. [1*]

IV.

Defendant, International Longshoremen's and Warehousemen's Union, Local 16 (also sometimes designated as Local 1-16), hereinafter designated "Local 16" is and at all times herein mentioned was a labor organization chartered by and affiliated with the International Longshoremen's and Warehousemen's Union immediately hereinabove described in Paragraph III hereof, with its headquarters in the City of Juneau, Alaska, and is engaged in representing its members in and about said city.

V.

At all times herein mentioned plaintiff conducted and now conducts a lumber manufacturing opera-

* Page numbering appearing at bottom of page of original Transcript of Record.

tion which at all times material hereto operated as follows: Plaintiff maintains a logging operation at Edna Bay, Territory of Alaska, and transports its logs from said place to its mill at Juneau in said Territory, at which mill said logs are manufactured into lumber and lumber products. Plaintiff maintains retail lumber yards in the cities of Juneau, Anchorage and Fairbanks, in the Territory of Alaska, at which yards it sells a portion of the lumber manufactured at its mill, as well as hardware, sash, doors, shingles, and other items commonly sold at retail lumber yards, all of which items except its lumber are purchased in the United States and transported to said yards. Plaintiff sells the majority of the lumber and lumber products produced at its mill in Juneau to customers in many states of the United States, shipping said lumber and lumber products so sold to said customers by water to West Coast ports in the United States and Canada and from said ports by railroad to its customers located as aforesaid. That by virtue of its location plaintiff is unable to receive or ship products in the operation of its business as herein described except by water, in whole or in part. That the loading and unloading of its barges at its mill is an essential part of the manufacturing and sale of plaintiff's lumber and lumber products.

VI.

That a labor organization, to wit, International Woodworkers of America, Local M-271, hereinafter

designated "Local M-271," has at all times herein mentioned represented and now represents all of plaintiff's employees at its [2] mill and retail yard in Juneau, except plaintiff's clerical and supervisory employees, and plaintiff has at all times herein mentioned recognized and bargained with said Local M-271 as such representative; that there is now and has at all times herein mentioned been in effect a collective bargaining agreement between plaintiff and Local M-271 wherein plaintiff recognizes the right of Local M-271 to bargain for plaintiff's employees at its Juneau operations as described herein.

VII.

From about April 10, 1948, until the present time defendants have unlawfully engaged in, and induced and encouraged plaintiff's employees at Juneau, Alaska, and employees of other employers, to engage in a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities of plaintiff, or to perform any services for plaintiff.

VIII.

An object of defendants in their activities described in paragraph VII above has been, and is, to force and require plaintiff; to assign the work of loading its barges with its lumber to members of Local 16 rather than to other persons, including members of Local M-271, to whom said work has

heretofore been assigned. Neither of said defendants has been certified by the National Labor Relations Board as the bargaining representative for employees performing such work.

IX.

That as a direct and proximate result of the picketing and coercive statements of defendants, and of the communication of the fact of said picketing to other labor organizations in ports of the United States and Canada, and elsewhere, all of which activities have been since April 10, 1948, and now are continuously carried on, plaintiff's employees at its Juneau mill refused to work for a long period of time, to wit, from April 10, 1948, to approximately July 19, 1948, and plaintiff was forced to close said mill as a result thereof. That sufficient employees returned to work on or about July 19, 1948, to enable plaintiff to operate said mill for a period of time, to wit, until October 11, [3] 1948, but at greatly increased cost to plaintiff. That because of the activities of defendants aforesaid, plaintiff has been unable to ship its lumber from its mill to customers, and as a result thereof plaintiff again was forced to close its mill on October 11, 1948. That because of the activities of defendants aforesaid plaintiff has been and is unable to transport materials to its retail yards in Alaska as described in Paragraph V hereof. That as a direct and proximate result of the unlawful activities of defendants, as hereinabove described, plain-

tiff has been damaged in the amount of One Million Twenty-Five Thousand ($1,025,000.00) Dollars to date of filing this second amended complaint.

X.

It has been necessary for plaintiff to employ attorneys for the institution, maintenance and prosecution of this action, and will incur fees for such services in a minimum reasonable amount of Ten Thousand ($10,000.00) Dollars.

Wherefore, plaintiff demands judgment against defendants and each of them in the sum of One Million Twenty-Five Thousand ($1,025,000.00) Dollars and the additional sum of Ten Thousand ($10,000.00) Dollars as attorneys' fees, and for its costs and disbursements herein.

N. C. BANFIELD,
Attorney for Plaintiff.

Copy received 4/27/49.

[Endorsed]: Filed April 27, 1949. [4]

[Title of District Court and Cause.]

SPECIAL APPEARANCE BY MOTION TO QUASH SERVICE OF SUMMONS

Comes now International Longshoremen's and Warehousemen's Union, and appearing specially for the purposes herein set forth and for none other, moves that the service of summons on movant herein be quashed; and for grounds states movant is an unincorporated labor organization with offices at

San Francisco, California; that the purported service of summons on movant was made on Verne Albright at Cordova, Alaska; that the said Verne Albright was not at the said time of purported service of summons an officer or agent of movant, or an officer or agent of movant upon whom service of summons of any court of the United States could lawfully be made on movant; all of which appears from the files and records of the Court and from the affidavit attached hereto, and made a part hereof by reference, and from the affidavit of Germain Bulcke heretofore filed herein.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER,
HENRY RODEN,
WILLIAM L. PAUL, JR.
Attorneys for International Longshoremen's and Warehousemen's Union, Movant.

By /s/ WILLIAM L. PAUL, JR.,
Of Counsel for Movant.

Copy received. [5]

[Title of District Court and Cause.]

AFFIDAVIT OF VERNE ALBRIGHT

United States of America
Territory of Alaska—ss.

Verne Albright, being first duly sworn, on oath deposes and says:

That he is the identical person on whom the sum-

mons is alleged to have been served in this cause. Affiant states that on or about November 10, 1947, he was appointed an International Representative of International Longshoremen's and Warehousemen's Union (hereinafter referred to as "ILWU") by the International Organizing Committee of said union. Affiant states that while he was never given any written instructions concerning his duties as an International Representative of the ILWU, he had had previous discussions with Germain Bulcke, Second Vice-President of ILWU, in connection with this matter, and that Mr. Bulcke had orally informed him that his principal duty as International Representative would be to serve as a liaison between ILWU locals in Alaska and the office of ILWU in San Francisco, and that his other duties would be to report to the ILWU office in San Francisco on the observance of ILWU's constitution and by-laws by the locals in Alaska and on the general conditions of labor relations as such reports were specifically requested by ILWU, or at semi-monthly intervals; to organize new ILWU locals in Alaska; to assist in labor relations and negotiations between ILWU locals in Alaska and employers, but only at the request of said locals and in their interest and on their behalf; to provide service to ILWU locals in Alaska in the sense of advising them on labor relations matters and other problems which they might have.

Affiant further states that he has not had, nor does he now have, any general power to bind ILWU

in any particular, nor did he have at any of the times herein mentioned, power or authority, generally to bind or commit or obligate ILWU in any way. Similarly, save and except that at the specific [6] Instance and request of locals in Alaska, he had no power to bind or commit the locals.

Each local is autonomous within ILWU and this autonomy is complete with regard to the commencement or cessation of labor disputes or the cooperation or lack of it with other labor organizations.

Affiant states that his power to bind ILWU is limited to matters specifically and specially referred to him by ILWU and only if, as and when such power to bind is specifically and specially conferred upon him by ILWU.

Affiant states that at no time has he specifically or specially or in any other way been empowered to accept the service of process for and on behalf.

Affiant further states with regard to the labor dispute currently existing between the Juneau Spruce Corporation and defendant Local Union 16 of ILWU as follows:

1. This is a dispute between the company and Local Union 16. It is not a dispute between the company and the ILWU.

2. Affiant's activities in connection with this dispute insofar as they relate to ILWU have been as follows:

(a) Making general reports on the dispute to ILWU approximately semi-monthly; this is part of affiant's general duty to ILWU informed on the

progress of all such matters in which his locals are interested.

(b) Rendering to Local 16 his usual advisory services as requested from time to time by Local 16. Such advice consisted principally of advice on questions of whether the action or contemplated action of Local 16 is or is not within the power of Local 16, and whether it is or is not advisable to take from time to time.

(c) Affiant has made no request either on his own initiative or on behalf of Local 16 for any assistance, cooperation, approval, disapproval, permission or ratification of any kind of action taken by Local 16 in said labor dispute to ILWU or to any other locals of ILWU.

(d) There has been no assistance, cooperation, approval, disapproval, permission or ratification by ILWU of any of the action taken by Local 16.

(e) The only instructions affiant has received from ILWU in connection with this matter is that he is to make himself available to Local 16 for the purpose of exploring with it and its officers any possibilities or settlement of the controversy between Local 16 and the employer. Affiant is to make only recommendations in this connection; the ultimate authority to settle a controversy on any terms is vested in Local 16.

(3) No money or other thing of value has been paid or obligated to be paid by Local 16 to ILWU on account of said dispute directly or indirectly. Nor has any money or thing of value been paid or

obligated to be paid by ILWU to Local 16 on account of said dispute.

4. ILWU has not instigated, maintained or advised the commencement or continuance of said dispute directly or indirectly, specifically or generally; ILWU is not now, nor has it even been since long prior to the commencement of said dispute, engaged in the business of instigating, maintaining or advising the commencement or continuance of any labor disputes including said dispute between any Alaskan employers and any local unions in Alaska, including Local 16; no specific benefit is recognized, known to exist, or expected to be obtained by ILWU from said dispute, if said Local 16 wins or compromises said dispute; and no specific injury is recognized known to exist, or expected to be incurred by ILWU from said dispute if Local 16 loses or compromises said dispute; the only money or thing of value that goes from Local 16 to ILWU is the payment of the regular per capita tax from the Local to ILWU and that is not affected by this dispute.

5. ILWU is an unincorporated labor organization and has no officers or agents in Alaska to represent it. It maintains no office at any point or points in Alaska. It has no agent for the service of process in Alaska now or at any of the times herein mentioned.

6. The system of organization of ILWU herein

described has been the only system maintained since about 1937.

7. The governing body of ILWU is its membership; that its membership functions through annual conventions; that in between conventions there are meetings of its Executive Board, and in between meetings of the Executive Board, it is governed by its four titled officers, to wit, a president, a first vice-president, a second vice-president, and a secretary-treasurer; that all of the titled officers of ILWU are residents of the State of California, and transact their business in the State of California; that the executive Board transacts its business in the State of California; that the members of the Executive Board are residents of the States of Oregon, Washington and California, and transact the business delegated to them by the said Board in the states of their residence; that no member of the Executive Board is a resident or inhabitant of Alaska, nor has there been a member of the Executive Board in Alaska since prior to the commencement of this suit.

8. That ILWU during all the times herein mentioned, maintains, recognizes, cooperates and participates in and customarily ratifies no other activities than those above set forth except purely educational and publicity activities of a general nature on labor relations matters.

9. That affiant is not now, nor has he ever been, authorized generally or specially to accept service

of summons on behalf of ILWU in this or any other cause, or to appear for or represent ILWU in any court.

10. Affiant makes this affidavit for the purpose of supporting the special appearance of ILWU.

/s/ VERNE ALBRIGHT.

Subscribed and sworn to before me this December 27, 1948.

[Seal] /s/ ORPHA C. MILLIGAN,
Notary Public for Alaska.

My Commission expires June 3, 1952.

Copy received. [9]

[Title of District Court and Cause.]

MINUTE ORDER OF MARCH 11, 1949

At this time the Court filed its Opinion in this case in which it was decreed that this Court had jurisdiction of the International Union, which in effect overruled defendants' demurrer on both grounds. Later, upon the calling up for argument, Motion to Strike in cause No. 6046-A, it was stipulated between counsel that the effect of the decision above mentioned would also have the effect of overruling the defendants' two other motions in this case. The Motion to Quash was made and overruled. [10]

[Title of District Court and Cause.]

DEMURRERS

Come now defendants and demur to plaintiff's complaint, and for grounds state:

1. This Court has no jurisdiction of the person of the defendants.

2. This Court has no jurisdiction of the subject of the action.

HENRY RODEN and
WILLIAM L. PAUL, JR.,
Attorneys for Defendants.

By WILLIAM L. PAUL, JR.,
Of Counsel.

Receipt of Copy acknowledged.

[Endorsed]: Filed November 20, 1948. [11]

[Title of District Court and Cause.]

MOTION FOR LEAVE TO WITHDRAW DEMURRER

Comes now International Longshoremen's and Warehousemen's Union by its Attorneys, and moves the court for leave to withdraw insofar as it is concerned, the demurrers which appear to have been filed in its behalf heretofore; and for grounds states that said demurrers were filed by William L. Paul, Jr., and Henry Roden at the instance and request

of Verne Albright; that the said Verne Albright; that the said Verne Albright was without authority to employ any attorneys, including William L. Paul, Jr., and Henry Roden, for movant in this cause, or to authorize attorneys in any manner to proceed; and said demurrers are not the pleading of movant; all of which appears by affidavits attached hereto and made a part hereof by reference.

GLADSTEIN, RESNER,
ANDERSEN and SAWYER,
WILLIAM L. PAUL, JR. and
HENRY RODEN,

Attorneys for International Longshoremen's and Warehousemen's Union, Movant.

By /s/ WILLIAM L. PAUL, JR.,
Of Counsel for Movant. [12]

[Title of District Court and Cause.]

AFFIDAVIT OF GERMAIN BULCKE

State of California,
City and County of San Francisco—ss.

Germain Bulcke, being first duly sworn, deposes and says:

That I am now and at all times herein mentioned have been a title officer, to wit, Second Vice-President of the International Longshoremen's and Warehousemen's Union (hereinafter referred to as

"ILWU"); that I have been informed that Verne Albright has been served with a summons in the above-entitled matter; that Verne Albright is not now and never has been authorized to accept service of summons or any other process for and on behalf of ILWU, or to appear for or represent ILWU in any court; that Verne Albright was appointed an "International Representative" of ILWU in November of 1947; that prior to his appointment, while I was engaged in a tour of Alaska, I discussed [13] with him the possibility of such appointment and informed him that if the officers of ILWU decided to appoint him to that post, his principal task would be that of communicating conditions in Alaska which affect ILWU locals to the San Francisco offices of ILWU, and to give advice to ILWU locals in Alaska as requested by those locals and only when requested by those locals, in connection with labor relations matters in which they might be involved. Actually, Albright's principal function in Alaska is to assist and advise the local unions there on their own behalf and in their own interest, and to inform the ILWU of what he is doing. This function would normally be performed by an officer or officers of the local unions in Alaska but since their financial condition is such as not to permit them to maintain such a person in full time employment, the ILWU officers simply chose one of the Alaska members and undertook to provide him with a salary. Apart from receiving his salary from the ILWU and from making

periodic reports to the ILWU, Albright has no other connection with the ILWU. His chief duties are to assist the locals as and when requested by them.

He certainly had never been authorized to, nor does he have the power to, bind the ILWU in any respect save and except as that power may from time to time be specially conferred upon him; no power, either specially or generally, was conferred upon him with respect to representing, binding or committing the ILWU in connection with this lawsuit, and no power has ever been conferred upon him generally or specifically, with respect to the service of process on him as a representative of the ILWU.

GERMAIN BULCKE.

Subscribed and sworn to before me this 16th day of December, 1948.

[Seal] ALICE C. MORSE,
Notary Public in and for the City and County of San Francisco, State of California.

Receipt of Copy acknowledged.

[Endorsed]: Filed January 3, 1949. [14]

[Title of District Court and Cause.]

MOTION FOR CERTIFICATE

Comes now International Longshoremen's and Warehousemen's Union, one of the defendants above named, by its attorneys undersigned, and appearing specially for the purposes of this motion and none other, moves the court for an order that its certificate issue to the Attorney General of the United States under and pursuant to Title 28, Sec. 2403, United States Code; and for grounds states that it appears from the special appearance of this defendant heretofore filed herein to quash service of summons that a question of the constitutionality of Sec. 301 (e) of the Labor Management Relations Act, 1947, will be raised by movant, in that said section seeks to create agency relationships and liabilities therefor irrespective of whether such agency relationships exist in fact, contrary to and in violation of the "due process" clause (Amendment V) of the U. S. Constitution.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER.
HENRY RODEN and
WILLIAM L. PAUL JR.,
Attorneys for Movant.

By /s/ WILLIAM L. PAUL, JR.,
Of Counsel.

Copy received January 3, 1949.

[Endorsed]: Filed Jan. 3, 1949. [15]

[Title of District Court and Cause.]

MOTION FOR CERTIFICATE BY LOCAL 16.

Comes now Local No. I-16 of the defendants above-named, and moves the court that its certificate issue to the Attorney General of the United States under and pursuant to Title 28, Sec. 2403, U. S. Code (1948) that the constitutionality of the Labor Management Relations Act, 1947, Section 303 (b) has been drawn into question by this defendant, in that the reference made in said section 303 (b) purports to confer jurisdiction on "any court" irrespective of whether any court has power to confer or allow the right to trial by jury or adequate notice and hearing, contrary to and in violation of the "due process" clause (Amendment V) and the "equal protection" clause (Amendment XIV, Sec. 1) of the U. S. Constitution.

HENRY RODEN and
WILLIAM L. PAUL, JR.,
Attorneys for Movant.

By WILLIAM L. PAUL, JR.,
Of Counsel.

Receipt of Copy acknowledged.

[Endorsed]: Filed January 11, 1949. [16]

[Title of District Court and Cause.]

ORDER OVERRULING DEMURRER AND DENYING MOTIONS

The Court having called on for hearing the following described Demurrer and Motions and the respective parties having been heard in open court with respect thereto, and the Court having filed its Opinion herein holding that the Demurrer must be overruled, both with respect to its jurisdiction over the person of the defendants and its jurisdiction over the subject of this action; and the Court being fully advised in the premises with respect to:

1. Both Defendants Demurrer to Plaintiff's Complaint on the grounds that this court has no jurisdiction over the person of the defendants and that this court has no jurisdiction over the subject of the action,

2. The Motion of International Longshoremen's & Warehousemen's Union, Local No. 1-16, requesting that a Certificate issue to the Attorney General of the United States under the provisions of Title 28, Section 2403, U. S. Code, 1948, because a constitutional question has arisen under Sec. 303(b) of the Labor Management Relations Act.

3. The Motion of International Longshoremen's & Warehousemen's Union for an Order certifying to the Attorney General of the United States pursuant to Title 28 Sec. 2403 U. S. Code, that a constitutional question has arisen under Sec. 301(e) of the Labor Management Relations Act. [17]

4. The Motion of International Longshoremen's & Warehousemen's Union to quash service of the summons upon said defendant.

5. The Motion of International Longshoremen's & Warehousemen's Union for leave to withdraw its Demurrer with respect to this Court's jurisdiction over the person and subject of said defendant.

The court having heard the argument and considered the briefs filed by the parties, orders as follows:

It Is Hereby Ordered that the above-described Demurrer is hereby overruled on both grounds stated therein, and said Motions are each hereby denied. The Defendants are allowed ten (10) days from March 11, 1949, within which to further plead without prejudice to their right to apply for a further extension of time within which to plead if good cause is shown that they are unable to further plead within such time.

Done in open court this 18 day of March, 1949.

GEORGE W. FOLTA,
Judge.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 18, 1949. [18]

[Title of District Court and Cause.]

ANSWER & AFFIRMATIVE DEFENSE

Comes now defendant International Longshoremen's and Warehousemen's Union, Local 16, hereinafter called "Local 16," and answering the complaint, admits, denies and alleges as follows:

1. Answering paragraph one of said complaint, Local 16 denies each and every allegation therein contained and the whole thereof.

2. Answering paragraph two of said complaint, Local 16 admits the material allegations thereof.

3. Answering paragraph three of said complaint, Local 16 denies each and every allegation therein contained and the whole thereof.

4. Answering paragraph four of said complaint, Local 16, admits the material allegations thereof.

5. Answering paragraph five of said complaint, Local 16 admits the material allegations thereof, except that Local 16 denies "that the loading and unloading of its (plaintiff's) barges at its mill is an essential part of the manufacturing * * * of plaintiff's lumber and lumber products."

6. Answering paragraph six of said complaint, Local 16 denies each and every allegation therein contained and the whole thereof.

7. Answering paragraph seven of said com-

plaint, Local 16 denies each and every allegation therein contained and the whole thereof.

8. Answering paragraph eight of said complaint, Local 16 denies each and every allegation therein contained and the whole thereof. [19]

9. Answering paragraph nine of said complaint, Local 16 denies each and every allegation therein contained; and particularly Local 16 denies that plaintiff will be damaged in the sum of $193,000, or in any other sum or at all.

10. Answering paragraph ten of the complaint, Local 16 denies each and every allegation therein contained and the whole thereof.

Affirmative Defense

As a further and affirmative defense, defendant Local 16 alleges as follows:

11. Juneau Spruce Corporation, hereinafter called "the Company," is a business enterprise incorporated and existing by virtue of the laws of the Territory of Alaska, and has its principal place of business in Juneau, Alaska.

12. The Company has been and is engaged principally in felling timber and manufacturing lumber products from its logs, in which latter operation it operates a mill in Juneau, Alaska. The value of the products manufactured by the Company annually is in excess of $1,000,000.00, which products are sold and shipped by the Company from Juneau to cus-

tomers in the Territory of Alaska in places other than Juneau, and to customers in various States of the United States, being transported to the latter customers by seagoing, waterborne carriers and by railway carriers operating through Canada and through various States of the United States.

13. The Company is engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the Labor Management Relations Act of 1948, hereinafter called the "Act."

14. Local 16 is a labor organization within the meaning of Section 2, subsection (5) of the Act, functioning as such in the Territory of Alaska since prior to 1937.

15. Local 16, ever since 1937, has been and now is a party to a collective bargaining agreement with all employers engaged in business along the waterfront in Juneau, Alaska, duly organized and all commonly known as the "Waterfront Employers Association of Juneau, Alaska," which collective bargaining agreement included the following provisions: That the said employers agreed to hire for longshore [20] work, members of Local 16; and Local 16 agreed to assist said employers in calling its members to work; and Local 16 further agreed to use reasonable efforts to provide as many persons for longshore work as said employers called, first exhausting the aforesaid preference, and then providing "extra" men; and if the aforesaid preference and extra men were not available, the said employers were free to hire whomsoever they chose for

said work. That in actual practice said employers hired very few persons not members of Local 16 or extra men provided by Local 16, Local 16 being able to provide the number of persons requested by the employer. Each extra man is granted a permit by Local 16 to work at longshoring, which grant is without restriction, except the payment of a nominal fee. That under and by virtue of said agreement, members of Local 16, since the Company commenced operations, have been employees of the Company.

16. Ever since the commencement of its operations, Juneau Spruce Corporation has been and now is a party to the collective bargaining contract described in paragraph 15 hereof.

17. In the course of the Company's said operations and beginning about May 1, 1947, the Company used one or more seagoing barges, steamships, pot scows, inland water barges, tug boats, cannery tenders and other types of floating equipment to transport its lumber by water from its mill in Juneau to places of delivery in Canada, Alaska, and the Continental United States, and in ocean transportation, and assigned certain of its employees, who worked usually in a different appropriate collective bargaining unit, to wit, in its mill and mill yard, to load its lumber aboard said barges at its said mill yard and dock, and refused to assign its employees, to wit, members of Local 16, to load said barges:

18. On or about October 23, 1947, with full knowledge, acquiescence and consent of IWA, Local M-271, Local 16, then and subsequently, asserted to the Company that it would picket the operations of the Company at its mill in Juneau because the Company was violating the contract described in paragraph 15 hereof, unless the Company agreed to abide by said contract and reduce the terms thereof to writing. [21]

19. On April 10, 1948, at the hour of approximately 6:00 a.m., Local 16 engaged and continued in peacefully picketing the operations of the Company at its mill in Juneau throughout 1948, to induce compliance with its assertions set forth in paragraphs 15 and 17 hereof.

Wherefore, Local 16 prays that the Complaint be dismissed and plaintiff go without day.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER and
HENRY RODEN and
WILLIAM L. PAUL, JR.,
Attorneys for ILWU Local 16.
By WILLIAM L. PAUL, JR.,
Of Counsel.

United States of America,
Territory of Alaska—ss.

Joe Guy of Juneau, Alaska, being first duly sworn, on oath deposes and says: That I am agent

for Local 16 and am duly authorized by said Local to make verifications of this nature on its behalf and now so act; that I have read the foregoing Answer and Affirmative Defense, know the contents thereof, and the same is true.

JOE GUY.

Subscribed and sworn to before me this 24th day of March, 1949.

[Seal] WILLIAM L. PAUL, JR.,
Notary Public for Alaska.

My Commission expires Jan. 19, 1952.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 24, 1949. [22]

[Title of District Court and Cause.]

MINUTE ORDER OF APRIL 27, 1949

This case came on before the court for trial by jury. Upon roll call the entire jury was found to be present. Plaintiff was represented by N. C. Banfield and Manley D. Strayer. Defendants were represented by Henry Roden, William L. Paul and George Anderson, the latter having been admitted as associate counsel in this case only. Plaintiff moved for permission to file his second amended complaint; defendants objected but the objection was overruled and the second amended complaint

was filed. It was thereupon stipulated that the answers on file will apply as to the amended complaint, and thereupon plaintiff filed an amended reply, after which the Court proceeded to empanel a jury to try the case. At 5:00 p.m. a jury not having been secured, court was adjourned until tomorrow morning at 10:00 o'clock.

[Title of District Court and Cause.]

ANSWER

Comes now International Longshoremen's and Warehousemen's Union, hereinafter called "ILWU," one of the defendants above named, and answering plaintiff's complaint, admits, denies, and alleges as follows:

1. Answering paragraph one of said complaint, ILWU denies each and every allegation therein contained.

2. Answering paragraph two of the Complaint, ILWU admits the material allegations therein contained.

3. Answering paragraph three of said complaint, ILWU denies each and every allegation therein contained and the whole thereof.

4. Answering paragraph four of said complaint, ILWU denies each and every allegation therein contained except that ILWU admits that Local 16, therein referred to, was and is a labor organization.

5. Answering paragraph five of said complaint, ILWU alleges that it does not have knowledge or information sufficient to form a belief as to whether the allegations contained therein are true, and, therefore, denies each and every allegation therein contained.

6. Answering paragraph six of said complaint, ILWU alleges that it does not have knowledge or information sufficient to form a belief as to whether the allegations contained therein are true, and, therefore ILWU denies each and every allegation therein contained.

7. Answering paragraph seven of the complaint, ILWU denies each [24] and every material allegation therein contained and the whole thereof.

8. Answering paragraph eight of said complaint, ILWU denies each and every material allegation therein contained and the whole thereof.

9. Answering paragraph nine of said complaint, ILWU denies each and every material allegation therein contained and the whole thereof; and particularly denies that plaintiff has been damaged in the sum of $193,000 or in any other or at all, on account of any matter or thing done or left undone by this answering defendant.

10. Answering paragraph ten of said complaint, ILWU denies each and every allegation therein contained and the whole thereof.

Wherefore, the answering defendant prays that

plaintiff recover nothing against it and that it recover its costs and disbursements herein.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER, and
WILLIAM L. PAUL, JR., and
HENRY RODEN,
Attorneys for Defendants.

By WILLIAM L. PAUL, JR.,
Of Counsel.

United States of America,
Territory of Alaska—ss.

William L. Paul, Jr., of Juneau, Alaska, being first duly sworn, on oath deposes and says that I am one of the Attorneys for Defendants and am duly authorized by said defendant to make this verification in their behalf; that defendant ILWU is not at place where verification is made; that I have read the foregoing Answer, know the contents thereof and the same is true.

WILLIAM L. PAUL, JR.,
Affiant.

Subscribed and sworn to before me this 24th day of March, 1949.

[Seal] SUE M. KENNEDY,
Notary Public for Alaska.

My Commission Expires April 18, 1949.

Receipt of copy acknowledged.

[Endorsed]: Filed March 24, 1949. [25]

[Title of District Court and Cause.]

REPLY

Comes now the plaintiff and in reply to the affirmative defense of the defendant, International Longshoremen's and Warehousemen's Union Local 16, the plaintiff admits and denies the allegations thereof as follows:

I.

Plaintiff admits the allegations of paragraph numbered 11 in said defendant's affirmative defense.

II.

Plaintiff admits the allegations of paragraph numbered 12 of said defendant's affirmative defense.

III.

Plaintiff admits the allegation contained in paragraph numbered 13 of said defendant's affirmative defense.

IV.

Plaintiff admits the allegations of paragraph numbered 14 in said defendant's affirmative defense.

V.

Plaintiff has insufficient knowledge regarding the statements made in paragraph numbered 15 of said defendant's affirmative defense to form a belief regarding the same and therefore denies each and every allegation of said paragraph except that plaintiff specifically denies that Local 16 has been

or now is a party to a collective bargaining agreement with all employers engaged in business along the waterfront in Juneau, Alaska, and further denies that [26] members of Local 16, since the commencement of its operations, have been employees of the company by virtue of said agreement.

VI.

Plaintiff denies the allegations contained in paragraph numbered 16 of said defendant's affirmative defense.

VII.

Plaintiff admits the allegations of paragraph numbered 17 of said defendant's affirmative defense except that plaintiff denies that the employees assigned to load lumber aboard said barges usually worked in a different appropriate collective bargaining unit than the one to which the members of Local 16 belonged.

VIII.

Plaintiff admits the allegations of paragraph numbered 18 of said defendant's affirmative defense except that plaintiff denies that the assertion to the company alleged in said paragraph was made with the acquiescence and consent of I.W.A. Local M-271.

IX.

Plaintiff admits the allegations contained in paragraph numbered 19 of said defendant's affirmative defense.

Wherefore, plaintiff prays that said affirmative defense be dismissed and held for naught, and that plaintiff be given relief as prayed for in plaintiff's complaint.

FAULKNER, BANFIELD & BOOCHEVER,

By N. C. BANFIELD,
Of Counsel for Plaintiff.

[Endorsed]: Filed April 1, 1949. [27]

[Title of District Court and Cause.]

DEFENDANTS' REQUESTED INSTRUCTIONS

Respectfully submitted,

WILLIAM L. PAUL, JR.,
Of Attorneys for Defendants.

No. 1

You are instructed that it is the public policy of the United States that—

Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its

relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of the Labor Management Relations Act of 1947, oftentimes called the "Taft-Hartley Act," in order to promote the full flow of commerce; to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and prescribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

Approved: .....
Refused: .....
Modified: ..... [29]

No. 2

The Taft-Hartley Act was enacted in the interest of public policy to avoid economic strife and warfare, and so if you find from a consideration of all the evidence in this case that the action of the Juneau Spruce Corporation in refusing to accede to the demand of IWA M-271 to turn over the loading of barges to Local 16 was unreason-

able or unjustifiable, in view of that provision, plaintiff is not entitled to recover any damage it may have sustained on account of such unreasonable or unjustifiable refusal to bargain.

This policy is applicable only to the territorial limits of the United States and not to Canada.

Given: .....
Refused: .....
Modified: .....

No. 3

You are instructed that while neither IWA M-271 nor Local 16 has been certified as the bargaining agent for the employees or any craft or class of such employees of the plaintiff, nevertheless both unions had the right under the law to bargain with the plaintiff for the members of their respective organizations.

In this connection you are instructed that if the electricians, plumbers, carpenters, or members of any other craft employed by Juneau Spruce Corporation has the right under the Taft-Hartley Act to bargain with it in the interest of its members, and if they offered to do so it becomes the duty of the plaintiff to negotiate with them or any of them.

Given: .....
Refused: .....
Modified: ..... [30]

No. 4

The Court further instructs you that even though there was an agreement entered into on November 3, 1947, between Juneau Spruce Corporation and the IWA M-271, the IWA had the right at any time, as a matter of law, with the approval of Juneau Spruce Corporation, to assign its or any part of the longshore work to Local 16.

Given: .....

Refused: .....

Modified: .....

No. 5

You are further instructed that picketing is a form of free speech guaranteed by the Constitution of the United States. Picketing alone does not of itself give rise to a cause of action for damages. There must be additional evidence showing by a preponderance that such picketing was accompanied by acts of coercion or intimidation by defendants or either of them of plaintiff or plaintiff's employees to the extent that such coercion or intimidation in addition to the picketing caused them to refuse to go through the picket line.

In determining whether a preponderance of the evidence shows coercion or intimidation, you are instructed that the fact that members of IWA M-271 and others went through the picket line from July to October 11, 1948, may be considered in relation to the situation as it existed on April 10, 1948, as well as all other facts and circumstances of the case.

If you find that members of IWA M-271 and other employees of plaintiff voluntarily agreed or decided not to go to work, you cannot hold the defendants or either of them responsible; and you should find your verdict for defendants.

Given: .....
Refused: .....
Modified: .....[31]

No. 6

In this case evidence has been introduced that Verne Albright, Germain Bulcke and John Barry represented themselves as agents of the defendant International Union. In this connection, you are instructed that the mere statement of a person that he is the agent of another is not sufficient to establish such agency and unless you find from other evidence in this case which shows that the International Union actually and actively engaged in an effort to compel the Juneau Spruce Corporation to assign the loading of its barges to Local 16, the agency has not been established and it will be your duty to return a verdict in favor of the defendant International Union.

Given: .....
Refused: .....
Modified: .....

No. 7

In this case the plaintiff is suing for $1,025,000 damages and have introduced evidence in support of their claim. Money damages is something that

the jury should not lightly consider. The law requires that before any damages may be awarded, the amount of said damages must be definitely and precisely shown and proved. It is not sufficient for the plaintiff simply to allege that it has sustained damages and put in some proof to support its claim; and before you can award damages against these defendants or either of them, the exact amount of such damages must be definitely proved. Guesses as to the amount or guesses as to hoped-for profits, unsupported by definite, credible evidence, is not sufficient proof upon which you can award damages in any sum.

Given: .....

Refused: .....

Modified: ..... [32]

No. 8

You are instructed that the change of ownership of a manufacturing plant in no way affects a contract existing between the seller and his employees. —"It is the employing industry that is sought to be regulated and brought within the correct and remedial provisions of the Taft-Hartley Act."

And if you find from a consideration of all the evidence in this case that a contract existed between Local 16 and Juneau Lumber Mills at the time that the latter sold its plant to the Juneau Spruce Corporation under the terms of which contract Local 16 had the exclusive right to do all longshore work needed by Juneau Lumber Mills, it became and was the duty of plaintiff after its purchase

of said plant to continue to observe the provisions of that labor contract for the period of time it had to run or until it was mutually modified or terminated and then to bargain in good faith with Local 16 for a renewal thereof.

The phrase, "bargain in good faith" means what an ordinarily prudent man would do in similar circumstances towards bringing about a meeting of the minds of the parties concerned in the situation, and necessarily includes that each part confront the other openly and honestly and in such manner as to apprise the other fully of its meaning and intentions, and includes the element that neither party shall deliberately bring about an impasse.

National Labor Relations Board vs. Hopps Mfg. Co., 170 Fed. (2d) 964.

Given: .....
Refused: .....
Modified: ..... [33]

No. 9

I further instruct that under section 9 (c) (1) (b) of the Taft-Hartley Act, if two or more individuals or labor organizations present a claim to an employer to be recognized as a bargaining representative for any group of employees, that under such circumstances the employer, facing the claim of two different groups or unions also has the right to petition the National Labor Relations Board to have the question investigated and then an immediate election to determine who shall be

the representative of the group of workers involved.

In view of the foregoing, you may consider the failure of the employer to resort to the National Labor Relations Board as a matter in mitigation of any alleged damages claimed to have been suffered or sustained by the employer, in this instance the Juneau Spruce Corporation.

Given: .....
Refused: .....
Modified: .....

No. 10

"I further instruct you that if you find that the employer wilfully failed or refused to petition the National Labor Relations Board alleging that two unions were claiming jurisdiction over certain work, to wit, longshoring, and seeking to have the National Labor Relations Board conduct an investigation and immediate election to determine the proper bargaining unit, then I instruct you that the plaintiff cannot recover for any claimed damage, as its failure to comply with the provisions of the Act mentioned operate as a bar to recovery

Section 9, Labor Management Relations Act, 1947.

Given: .....
Refused: .....
Modified: ..... [34]

No. 11

Labor contracts may be oral or in writing, or

partly oral and partly in writing. They may be made through formal negotiations between the parties or be adopting the provisions of another contract existing between the same or other parties, or by adopting the customs and practices in a trade or industry which have been acquiesced in over a period of time.

If you find from a consideration of the evidence in this case that an agreement existed between Local 16 and the Juneau Lumber Mills, under which Local 16 performed all longshore work needed by Juneau Lumber Mills and that the plaintiff in this case adopted such agreement and hired members of Local 16 to do its longshore work, it may be fairly concluded that plaintiff adopted the contract formerly existing between Juneau Lumber Mills and Local 16 and it is bound by that adoption, and is required to carry out the terms thereof in good faith.

A labor contract, whether it be in writing or oral, or partly in one and partly in the other, should be construed in the light of all the facts and circumstances affecting the subject matter with which it deals. And you are authorized in arriving at a decision in this case to consider all evidence introduced relating to the manner in which the parties themselves interpreted the provisions of that contract or agreement.

Given: .....

Refused: .....

Modified: ..... [35]

No. 12.

You are instructed that section 201 of the Taft-Hartley Act provides as follows:

That it is the policy of the United States that:

"(a) Sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interests of the employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees;

"(b) The settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for settlement of disputes; and

"(c) Certain controversies which arise between parties to collective bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within

such agreement provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies."

No. 13

Section 204 of the Taft-Hartley Act provides as follows:

"(a) In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall:

"(1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provisions for adequate notice of any proposed change in the terms of such agreement;

"(2) Whenever a dispute arises over the terms or application of a collective bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously;

"(3) In case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this act for the purpose of aiding in a settlement of the dispute."

No. 14.

There has been introduced in evidence the determination of the National Labor Relations Board relating a labor dispute at the Juneau Spruce Corporation. This was introduced for the sole purpose of showing that no union has been certified at the Juneau Spruce Corporation plant, and this exhibit or any other reference to the National Labor Relations Board or its decisions are to be considered by you as evidence in this case than for the limited purpose for which said determination was introduced.

Given: .....
Refused: .....
Modified: ..... [37]

[Title of District Court and Cause.]

COURT'S INSTRUCTIONS TO THE JURY

No. 1

Ladies and Gentlemen of the Jury:

We have now reached the point in the trial of this case where it becomes the duty of the Court to instruct you as to the law that will govern you in your deliberations upon the facts of this case.

When you were accepted as jurors in this case you obligated yourselves by your oaths to well and truly try the matter in issue between the plaintiff and the defendants, and a true verdict render according to the law and the evidence as given to

you on the trial. That oath means that you will not be swayed by passion, sympathy or prejudice, and that your verdict will be the result of a careful consideration of all the evidence and the instructions of the Court as to the law.

Neither the statements of counsel engaged in the trial of this case, nor the allegations of the pleadings, except so far as they constitute admissions, are to be considered by you as proof of the facts to which they relate. You should not regard or consider the relative financial condition of the parties to the suit, nor the effect of your verdict upon the parties, or any of the, or attempt to arrive at a verdict based upon your individual or collective opinions as to the abstract principles of justice which should govern the case.

It is not for you to say what the law is or should be regardless of any idea you may have in that respect. It is the exclusive province of the Court to declare the law in these instructions, and it is your duty as jurors to follow them in your deliberations and in arriving at a verdict.

On the other hand it is the exclusive province of the jury to declare the facts in the case, and your decision in that respect, as embodied in your verdict, when arrived at in a regular and legal manner, is final and conclusive upon the Court. Therefore probably the greater ultimate responsibility in the trial of the case rests upon you, because you are the triers of the facts. [39]

No. 2

By this action the plaintiff seeks to recover from the defendants damages in the sum of $1,025,000 which it alleges it sustained in consequence of the acts of the defendants. The defendants will hereinafter be called the "International" and "Local 16" respectively.

The complaint alleges that during all the times material here the plaintiff has conducted a lumber manufacturing business, consisting of a sawmill at Juneau, retail lumber yards at Juneau, Anchorage and Fairbanks, and logging camps, and has shipped its products wholly or partially by water in interstate commerce; that, although the International Woodworkers of America was the recognized bargaining agent of plaintiff employees at Juneau, the defendants from April 10, 1948, to the time of bringing this action have nevertheless engaged in and induced and encouraged the employees of plaintiff and of other employers to engage in a concerted refusal in the course of their employment to manufacture, process, transport or otherwise handle or work on any goods, article, materials or commodities of plaintiff, or to perform any services for the plaintiff, for the purpose of compelling plaintiff to assign the loading of its barges with its lumber to members of Local 16 of the International Longshoremen's & Warehousemen's Union rather than to the persons, including members of the International Woodworkers of America, to whom said work had theretofore been assigned, and that neither of the defendants has been certified by the National

Labor Relations Board as the bargaining representative of the employees performing such work; that, as a direct and proximate result of picketing and coercion and of the communication of the fact of picketing to other labor organizations, plaintiff's employees refused to work from April 10 to July 19, 1948, and plaintiff was compelled to close its mill; that, although sufficient employees returned to work to permit of the operation of the mill from July 19 to October 11, 1948, at a greatly increased cost, the plaintiff was prevented from shipping its lumber because of the aforesaid acts of the defendants in consequence of [40] which it was again compelled to close its mill on October 11, 1948.

The defendants in their answers deny the foregoing allegations of the complaint, which places the burden of proving them by a preponderance of the evidence on the plaintiff.

No. 3

The provisions of the Taft-Hartley law under which this action is brought, so far as material here, are as follows:

> "Section 303(a) It shall be unlawful * * * for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal, in the course of their employment, to manufacture, transport or otherwise handle or work in any goods, articles, materials or commodities, or to perform any services, where an

object thereof is forcing or requiring any employer to assign particular work to employees in a particular labor organization * * * rather than to employees in another labor organization.

"Whoever shall be injured in his business or property by reason of any violation of Subsection (a) may sue therefor in any district court of the United States and shall recover damages by him sustained."

It is undisputed that the defendants are labor organizations within and subject to the provisions of the Taft-Hartley Act.

No. 4

The Taft-Hartley Act further provides that any labor organization shall be bound by the acts of its agents and that, in determining whether any person is acting as an agent of another person so as to make such other person responsible for his acts, the question of whether the acts done were actually authorized or subsequently ratified shall not be controlling.

Since a labor organization can act only through its officers and agents, it is responsible for the acts of its officers and agents done within the scope of their authority or employment. An agent is one who, by the authority of his principal, transacts his principal's business or some part thereof and represents him in dealing with third persons. [41]

It is undisputed that Germain Bulcke, John

Barry and the witness Verne Albright were, during the time covered by this controversy, officers of International. Hence, they were agents. But it is for you to say whether what they did, if anything, in committing or assisting in the commission of the acts charged, or any of them, if you find that such acts were committed, was within the scope of their employment.

A person acts within the scope of his employment when he is engaged in doing for his employer either the acts consciously and specifically directed or any act which is fairly and reasonably regarded as incidental to the work specifically directed or which is usually done in connection with such work. If, in doing such an act, a person acts wrongfully, the wrongful act is nevertheless within the scope of his employment.

The scope of employment is to be determined not only by what the principal actually knew of the acts of his agent within his employment but also by what in the exercise of ordinary care and prudence he should have known the agent was doing.

No. 5

Before the plaintiff may recover from the defendants, or either of them, it must prove by a preponderance of the evidence:

(1) That the defendants, or either of them, acting by or through their officers or agents, did, between April 10, 1948, and April 27, 1949, unlawfully engage in, or induce or encourage plaintiff's em-

ployees at Juneau, Alaska, or employees of other employers to engage in, a concerted refusal in the course of their employment to manufacture, process, transport or otherwise handle or work on lumber of plaintiff, or to perform any services for plaintiff;

(2) For the purpose of forcing and requiring the plaintiff to assign the work of loading its barges with its lumber to members of Local 16 rather than to other persons to whom said work had theretofore been assigned;

(3) That such acts, or any of them, if committed by and as the officers or agents of the defendants, or either of them, were within the scope of the employment of such officers or agents;

(4) That as a direct and proximate cause thereof the plaintiff was damaged.

No. 6

If you find from a preponderance of the evidence that during the period stated the defendants, acting separately or jointly, engaged in or induced or encouraged plaintiff's employees at Juneau, Alaska, to engage in, a concerted refusal in the course of their employment to manufacture, process, transport or otherwise handle or work on any lumber, or to perform any services for the plaintiff, and that the object thereof was to force or require the plaintiff to assign the work of loading its barges with its lumber to members of Local 16 rather than to other persons to whom such work had been assigned, and

that such acts directly and proximately caused pecuniary loss to the plaintiff, your verdict should be for the plaintiff in such amount as you find it has been damaged, not exceeding in any event the amount sued for. On the other hand, if you do not so find, your verdict should be for the defendants.

In this connection you are instructed that, if you find from a preponderance of the evidence that the defendants, through their officers or agents acting within the scope of their employment, entered into a conspiracy or understanding to commit the aforesaid acts or any of them for the object or purpose stated, or acted jointly or in pursuance of a common purpose or design, then from the time of entering into such a conspiracy or understanding everything that was done, said or written by any of the officers or agents of either in furtherance of such conspiracy or understanding and to effect the object or purpose thereof, regardless of whether done, said or written in Alaska or elsewhere, is binding on both of the defendants just as though they themselves, through their officers or agents, had done such acts or made such statements, and if the object of the conspiracy was accomplished, resulting in damage, each is liable for the whole thereof regardless of the degree of participation in the commission of the acts charged, or any of them.

A conspiracy, common purpose or design may be proved by direct evidence or by proof of such circumstances as naturally tend to prove it and which are sufficient in themselves to satisfy an ordinary

prudent person of the existence thereof. Therefore, it is not necessary that such a combination or understanding be shown to be in writing. It is sufficient if the evidence shows a combination of or cooperation between two or more persons to accomplish a common purpose.

On the other hand, if you find that the defendants did not act in concert or in pursuance of a common purpose or design, you will consider the case against each defendant separately, and you may find either or both or neither of them liable.

No. 7

You are instructed that two or more persons or organizations may participate in a wrong although they do so in different ways, at different times and in unequal proportions. One may plan and the other may be the actual instrument in accomplishing the mischief, but the legal blame will rest upon both as joint actors. Accordingly, one who directs, advises, encourages, procures, instigates, promotes, aids or abets a wrongful act by another is as responsible therefor as the one who commits the act, so as to impose liability upon such person to the same extent as if he had performed the act himself. [44]

No. 8

If you should find that plaintiff is entitled to recover against the defendants or either of them, it will then become your duty to assess the amount of damages which plaintiff may have sustained. In such event your verdict should be in such amount

as will fairly and reasonably compensate the plaintiff for the damage which it has sustained and which was proximately caused by the acts complained of, including any loss of profits which it is reasonably certain plaintiff would have received but for such acts.

No. 9

By proximate cause is meant the probable and direct cause. It is the cause that sets in motion or operation another or other causes and thus produces the injury. It is the cause which directly produces the injury and without which the injury would not have occurred.

No. 10

In a civil case, such as this is, the burden of proof rests upon the party holding the affirmative with respect to any issue by a preponderance of the evidence. By a preponderance of the evidence, is meant the greater weight of the credible evidence, that evidence which in your judgment is the better evidence and which has the greater weight and value and the greater convincing power. This does not necessarily depend on the number of witnesses testifying with respect to any question of fact, but it means simply the greater weight or the greater value and convincing power and which is the most worthy of belief; and so, after having heard and considered all the evidence in the case on any issue, you are unable to say upon which side of that issue the evidence weighs the more heavily, or if the

evidence is evenly balanced on any particular issue in the case, then the party upon whom the burden rests to establish such issue must be deemed to have failed to prove it. [45]

No. 12

Subject to the law as contained in these instructions, you are also the sole and exclusive judges of the credibility of the witnesses and of the effect and value of the evidence.

You are, however, instructed that your power of judging the effect of evidence is not arbitrary but is to be exercised by you with legal discretion and in subordination to the rules of evidence; that the oral admissions of a party should be viewed with caution; that evidence is to be estimated not only by its own intrinsic weight but also according to the evidence which it is in the power of one side to produce and of the other to contradict and, therefore, if weaker and less satisfactory evidence is offered when it appears that stronger and more satisfactory evidence was within the power of the party offering it, such evidence should be viewed with distrust.

Before reaching a verdict you will carefully consider and compare all the testimony. In determining the credibility of witnesses and the weight to be given their testimony, you decide which witnesses, and what testimony of such witnesses, are to be believed in the same way as you do when someone tells you anything out of court. You size up the

witness, you observe his appearance and demeanor, not his intelligence, whether he is candid and straightforward or shifty and evasive; you consider whether he has an interest in the outcome of the trial and what motive he may have for testifying as he did, the opportunity he had to learn of the facts to which he testified, the probability or improbability of his testimony, his bias or prejudice against or inclination to favor either party, and the extent to which he is corroborated or contradicted and all the other facts and circumstances which shed light on the witness' credibility or the weight of his testimony.

You are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in your minds against a less number or against a presumption or other evidence satisfying your minds. The direct evidence of one witness whom you find to be entitled to full credit is sufficient for the [46] proof of any fact in this case. A witness wilfully false in one part of his testimony may be distrusted in other parts. Whenever it is possible you will reconcile conflicting or inconsistent testimony, but where it is not possible to do so, you should give credence to that testimony which, under all the facts and circumstances of the case, appeals to you as the most worthy of belief.

You are also instructed that the opening statements and the arguments of counsel are not evidence, and they are not binding upon you. You

may, however, be guided by them if you find that they are supported by the evidence and appeal to your reason and judgment.

In considering your verdict you are instructed that any testimony which has been ordered stricken by the Court should not be considered by you for any purpose.

No. 13

The law requires that all twelve jurors must agree upon a verdict before one can be rendered.

While no juror should yield a sincere conviction, founded upon the law and the evidence of the case, merely to agree with other jurors, every juror, in considering the case with fellow-jurors, should lay aside all undue pride or vanity of personal judgment, and should consider differences of opinion, if any arise, in a spirit of fairness and candor, with an honest desire to get at the truth, and with the view of arriving at a just verdict because the law contemplates that the verdict shall be the product of the collective judgment of the entire jury.

No. 14

You are to consider these instructions as a whole. It is impossible to cover the entire case with a single instruction, and you should not single out one particular instruction and consider it by itself or separately from or to the exclusion of all the other instructions. [47]

As you have been heretofore instructed, your duty is to determine the facts of the case from the evi-

dence submitted, and to apply to these facts the law as given to you by the Court in these instructions. The Court does not, either in these instructions or otherwise, wish to indicate how you shall find the facts or what your verdict shall be, or to influence you in the exercise of your right and duty to determine for yourselves the effect of evidence you have heard or the credibility of witnesses, because the responsibility for the determination of the facts in this case rests upon you and upon you alone.

No. 15

Upon retiring to your jury room you will elect one of your number foreman, who will speak for you and sign the verdict unanimously agreed upon.

You will take with you to the jury room the exhibits and these instructions, together with four forms of verdict which are self-explanatory. You will return your verdict on one of these four forms.

When you have agreed upon a verdict and your foreman has dated and signed it, you will return it into court in the presence of the entire jury, together with the exhibits and these instructions.

Given at Juneau, Alaska, this 12th day of May, 1949.

GEORGE W. FOLTA,
Judge.

[Endorsed]: Filed May 13, 1949. [48]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Come now the defendants in the above-entitled action and move the Court to set aside and vacate the verdict of the jury in this action, and grant a new trial for the following reasons:

1. Errors of law occurring at the trial, and excepted to by defendants, in this, that the Court failed and refused to instruct the jury as requested by defendants in their written instructions duly submitted to the Court and numbered one through fifteen, for the reasons stated in such exceptions, and particularly as follows:

(a) Defendants' requested instruction No. 1 states the public policy of the Labor Management Relations Act, 1947, hereinafter called the "Act," and is material on the issue of whether plaintiff created or maintained the events in controversy to such an extent that plaintiff should not be permitted to maintain this action; and further on the issue of whether plaintiff reasonably acted to mitigate its damages.

(b) Defendants' requested instruction No. 2, for reasons similar to those stated in paragraph (a) hereof; and for the further reason that said Act is applicable only to the territorial limits of the United States.

(c) Defendants' requested instruction No. 3 states that persons or their representatives have a

right to ask for work and crafts have a right to organize, either or both of which the jury could have found to be controlling to define the actions or objects [49] of defendants or defendant Local 16, and consequently the corresponding duty of plaintiff, and require a verdict for defendants.

(d) Defendant's requested instruction No. 4 states matters of law upon which the jury could have found on the evidence that plaintiff created and maintained the events in controversy or failed and refused to mitigate its damages.

(e) Defendants' requested instruction No. 5 defines free speech, coercion and intimidation, all of which were issues of fact in evidence, to such an extent that the jury on the evidence would have found for defendants if they had been instructed as requested.

(f) Defendants' requested instruction No. 6 fully states the law of agency as the same was at issue, and thereby the jury would have returned a verdict for the defendant International Union.

(g) Defendants' requested instruction 7 states the precision with which damages must be proved, and had the jury been so instructed it would have returned a verdict for defendants or at the most nominal damages for the plaintiff.

(h) Defendants' requested instruction No. 8 states the law of succession of labor contracts and also the law of adoption thereof, and the duties to bargain which would have flowed therefrom, and the jury would have found from the evidence that

plaintiff was either successor to the Juneau Lumber Mills contract with defendant Local 16 or had adopted such contractor, from either of which would have arisen the duty of plaintiff to bargain with defendant Local 16 over the events in controversy, and from plaintiff's failure and refusal so to do, would have required a verdict for defendants.

(i) Defendants' requested instruction No. 9 states the law relating to mitigation of damages, which from the evidence would have required the jury to return a verdict for defendants or at the most a verdict for nominal damages.

(j) Defendants' requested instruction No. 10 states the law with regard to whether plaintiff created and maintained the event in controversy upon which upon the evidence the jury would have returned [50] a verdict for defendants, since it was uncontroverted that plaintiff failed and refused to make use of its remedies provided in Section 9 of the Act.

(k) Defendants' requested instruction No. 11 states the law with regard to the creation and existence of a labor contract and its interpretation, and therefrom the jury would have found upon the evidence that there was a labor contract in existence covering longshore work, which was a material point in issue, between plaintiff and Local 16, and the same was interpreted by all to cover longshore work; and found a verdict for defendants.

(l) Defendants' requested instruction No. 12

states the policy of the Act regarding the creation of labor contracts and settlement of all controversies, upon which from the evidence the jury would have found that plaintiff failed and refused to fulfill its legal duties to bargain and to use grievance settlement facilities of the federal government, and thereby would have returned a verdict for defendants.

(m) Defendants' requested instruction No. 13 states the policy of the Act and the effect thereof as stated in paragraph (1) hereinabove.

(n) Defendants' requested instruction No. 15 states the law and the effect thereof as mentioned in paragraph (e) hereof.

2. Errors of law occurring at the trial, and excepted to by defendants in this, that the court instructed the jury as follows:

(a) In Instruction No. 4, the Court in paragraphs 1, 3 and 6 thereof stated the law of agency so narrowly as to confuse the jury and thus require them to return a verdict against defendant International Union.

(b) In Instruction No. 6, the Court instructed the law of conspiracy, on which there was no issue fact at all, and thereby the jury was confused and returned a verdict against defendants.

(c) In instruction No. 11, the Court instructed the jury that Exhibit C was in evidence for a limited purpose only, whereas it was in evidence

generally, and furthermore it was in evidence on a material issue of fact whether a contract existed between Juneau [51] Lumber Mills and Local 16 and between plaintiff and Local 16.

3. Errors of law occurring at the trial and excepted to by defendants, in this:

(a) Plaintiff offered and gave evidence and exhibits, and the Court admitted over the objections of defendants, that plaintiff had not assumed the collective bargaining contract between Juneau Lumber Mills and Local 16; whereas such contract is illegal.

(b) Plaintiff offered and gave evidence and exhibits, and the Court admitted over the objections of defendants, parol evidence the purport of which was to vary the terms of the contract of November 3, 1947.

(c) Plaintiff offered and gave hearsay evidence, and the Court admitted the evidence over objections of defendants, on material issues purporting to be the evidence of members of International Woodworkers of America, on very numerous occasions.

(d) Plaintiff offered in evidence and the court admitted over the objections of defendants the constitution and by-laws of defendants, being Plaintiff's exhibits 3 and 4, whereas the same are immaterial and irrelevant to the issues of law and fact in this controversy.

(e) Plaintiff offered testimony and the court admitted over the objections of defendants that plaintiff had recognized IWA M-271 as the exclu-

sive bargaining agent of its employees, whereas such testimony is immaterial and irrelevant.

(f) Plaintiff offered testimony and exhibits of Verne Albright and John Barry as evidence of agency binding on defendant International Union, whereas such evidence is incompetent and irrelevant for any purpose.

(g) Plaintiff offered testimony and the court admitted the same over objections of defendants, by the witness Hawkins that plaintiff's mill would have a certain future capacity, whereas such testimony is opinion testimony and the said witness was not qualified as an expert or to have had any familiarity with sawmill operation. [52]

(h) Plaintiff offered testimony and the court admitted the same over objections of defendants, by the witness Hawkins that longshoring is not a craft, whereas the said witness was not qualified as an expert on such subject, or shown to have any familiarity therewith, and such testimony was opinion, and incompetent.

(i) Plaintiff offered testimony and the court admitted the same over objections of defendant by plaintiff's witness Kirkham to vary the terms of a written document, namely the IWA minutes of April 1, 1948, and such evidence was incompetent, irrelevant and immaterial.

(j) The same with regard to the testimony of plaintiff's witness Flint.

(k) Plaintiff offered testimony and exhibits and the court admitted the same over objections of de-

fendants, by the witness Youns hearsay testimony purporting to be that of Rockwell and Pilfold, and second handed hearsay testimony through Rockwell and Pilfold of which it is purported Albright and Barry had said; and the same was incompetent.

(l) Plaintiff offered testimony and exhibits and the court admitted the same over objections of defendants, by the witness Prawitz of what purported to be market prices of lumber but in the form of a compilation, but the said witness and plaintiff had failed and neglected to make available in any manner the things upon which such compilation was based, and thereby the defendants were denied the right of cross-examination of said witness, and his testimony was incompetent.

(m) Plaintiff offered testimony and the court admitted the same over objections of defendants, by the witness Schultz that members of Local 16 refused to handle plaintiff's lumber but such testimony was immaterial and irrelevant to any of the issues of the controversy and incompetent as hearsay.

(n) Plaintiff offered testimony and the court admitted the same over objections of defendants, by the witness Adams that members of Local 16 refused to handle plaintiff's lumber but such testimony was immaterial and irrelevant to any of the issues of the controversy. [53]

4. Errors of law occurring at the trial and excepted to by defendants, in this:

Defendants offered Exhibit C generally, and Exhibit D for identification generally in evidence, the testimony of the witness Pearson, all on the subject of offers made by local 16 to bargain and its right to bargain with plaintiff, but the court refused the same, although the same was a material issue in the controversy.

(b) The same with regard to offers of Local 16 to arbitrate and the duty of plaintiff to accept such arbitration in this controversy.

(c) The same with regard to the fact that plaintiff, after IWA M-271 refused to bargain concerning longshore work at plaintiff's plant.

(d) The same with regard to the fact that plaintiff never challenged the representation of Local 16 after IWA M-271 refused to bargain concerning longshore work at plaintiff's plant.

5. The said verdict is not supported by sufficient evidence, but is contrary to the evidence.

6. That said Act and the court's interpretation of said Act with regard to the use of free speech and speech generally by Local 16 is unconstitutional in that it abridges arbitrarily the same.

7. That the Court erred in overruling defendant International Union's motion for a direct verdict.

8. That the Court erred in ruling that affidavit of Albright introduced by plaintiff was not generally binding on plaintiff.

9. That the Court erred in overruling defendant Local 16's motion for a direct verdict.

Juneau, Alaska, May 16, 1949.

GEORGE ANDERSEN,
WILLIAM L. PAUL, JR., &
HENRY RODEN,
Attorneys for Defendants.

By WILLIAM L. PAUL, JR.,
Of Counsel.

Copy received May 16, 1949.

[Endorsed]: Filed May 16, 1949. [54]

[Title of District Court and Cause.]

MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT RESERVING RIGHT TO APPLY FOR NEW TRIAL

Come defendants and move the court to vacate and set aside the verdict of the jury rendered in said action on May 13, 1949, and to make and render a judgment in favor of defendants as prayed for in their answers, on the ground that the court should have directed at the trial of said action a verdict in favor of defendants, and that the ends of justice require said court to render judgment in favor of defendants as aforesaid. The defendants

reserve the right, in the event this motion is denied, to apply for a new trial.

This motion is made and based upon all the pleadings, papers, records and files in the above-entitled court as well as the minutes of the court and the testimony and exhibits adduced at said trial.

GEORGE ANDERSEN,
WILLIAM L. PAUL, JR., &
HENRY RODEN,
Attorneys for Defendants.

By /s/ WILLIAM L. PAUL, JR.,
Of Counsel.

Receipt of Copy attached.

[Endorsed]: Filed May 16, 1949. [55]

[Title of District Court and Cause.]

MOTION AND AFFIDAVIT FOR ADDITIONAL TIME WITHIN WHICH TO FILE ADDITIONAL GROUNDS AND SUPPORTING AFFIDAVITS RE MOTION FOR NEW TRIAL

United States of America,
Territory of Alaska—ss.

William L. Paul, Jr., being first duly sworn, on oath deposes and says that he is of attorneys for defendants in the above cause; that defendants

have already filed their motion for a new trial stating in part the grounds upon which the motion for new trial is made that there are additional grounds for such motion upon which defendants rely, namely that the verdict of the jury was materially influenced by passion and prejudice against defendant and for such cause rendered a verdict against defendants on the merits and in the amount of $750,000; that affiant has commenced his investigation of the actions of the jurors in their deliberations to the end that affidavits be prepared to support said grounds that affiant has been diligent in securing such information and has reasonable ground to believe that such grounds exist; that it will take at least one week to complete such investigation and secure said affidavits.

Wherefore, defendants pray that the time within which to complete the filing of said motion for new trial with support affidavits to be extended one week from May 16, 1949.

WILLIAM L. PAUL, JR.

Subscribed and sworn to before me this May 16, 1949.

LOIS P. ESTEPP,
Deputy Clerk of the Court.

[Endorsed]: Filed May 16, 1949. [56]

[Title of District Court and Cause.]

ORDER DENYING MOTION FOR NEW TRIAL

Defendants having filed a motion for new trial on the 16th day of May, 1949, and the Court having denied a motion for additional time within which to file affidavits and additional grounds for said motion, and the motion for a new trial having thereafter come on for hearing, and the Court having heard the respective parties and the arguments presented on their behalf by their attorneys of record, and the Court having found from a determination of the issues presented by said motion that the same should be denied;

Now Therefore, It Is Hereby Ordered that the defendants' motion for a new trial be and the same is hereby denied.

Done in open Court this 20 day of May, 1949.

/s/ GEORGE W. FOLTA,
Judge.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 20, 1949. [57]

[Title of District Court and Cause.]

ORDER DENYING MOTION OF JUDGMENT NOTWITHSTANDING VERDICT

The motion of the defendants for judgment notwithstanding verdict in the above-entitled action, having come on for hearing on May 20, 1949, and the Court having heard the argument on the motion as presented by the attorneys of record for the respective parties, and being fully advised in the premises;

It Is Hereby Ordered that said motion for judgment notwithstanding the verdict be, and the same is, hereby denied.

Done in open Court this 20th day of May, 1949.

GEORGE W. FOLTA,
Judge.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 20, 1949. [58]

[Title of District Court and Cause.]

ORDER DENYING MOTION FOR ADDITIONAL TIME WITHIN WHICH TO FILE ADDITIONAL GROUNDS AND SUPPORTING AFFIDAVITS IN SUPPORT OF MOTION FOR NEW TRIAL

The hearing on the motion of the defendants for additional time within which to file additional grounds and supporting affidavits in support of a motion for a new trial having come on for hearing before the Court on the 20th day of May, 1949, and the Court having heard the arguments on behalf of defendants and the arguments on behalf of plaintiff, as presented by the respective attorneys of record for the parties, and the Court being fully advised in the premises;

It Is Hereby Ordered that said motion filed by defendants for additional time within which to file additional grounds and supporting affidavits for a motion for new trial be, and the same is, hereby denied.

GEORGE W. FOLTA,
Judge.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 20, 1949. [59]

In the District Court for the Territory of Alaska
Division Number One at Juneau

No. 5996-A

JUNEAU SPRUCE CORPORATION, a Corporation,

Plaintiff,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, an Unincorporated Association, and INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, LOCAL 16, an Unincorporated Association,

Defendants.

JUDGMENT

The above-entitled action having come on for jury trial on a second amended complaint of plaintiff under a stipulation made in open Court by the respective parties that the Answer and Affirmative Defense of the defendant International Longshoremen's & Warehousemen's Union, Local 16, and the Answer of the defendant International Longshoremen's & Warehousemen's Union, as made to the original complaint of the plaintiff, shall be considered and are the pleadings of the defendants to the second amended complaint of the plaintiff, and under a stipulation of the respective parties that the amended reply of the plaintiff shall be the

pleading to the Affirmative Defense of the defendant International Longshoremen's Union, Local 16;

And said trial having been concluded on May 13, 1949, with a verdict in favor of the plaintiff and against both defendants for the sum of $750,000;

And the Court having denied the defendants' motions for judgment notwithstanding verdict and for a new trial;

Now, Therefore, It Is Hereby Ordered, Adjudged, and Decreed that the plaintiff be and it is hereby granted a judgment against the defendants International Longshoremen's & Warehousemen's Union and International Longshoremen's & Warehousemen's Union, Local 16, both unincorporated associations, in the sum of Seven Hundred Fifty Thousand ($750,000.00) Dollars, together with the plaintiff's costs [60] and disbursements herein, to be taxed by the Clerk of the above-entitled Court, including an attorney's fee of Ten Thousand ($10,000.00) Dollars.

Done in open Court this 20th day of May, 1949.

GEORGE W. FOLTA,
Judge.

Entered Court Journal No. 19 Pages 162-163.

Receipt of Copy acknowledged.

[Endorsed]: Filed May 20, 1949. [61]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Juneau Spruce Corporation, plaintiff above named, and its attorneys:

Notive is hereby given that defendants above named hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the orders of the Court of May 20, 1949, overruling defendants' motions for judgment for defendants notwithstanding the verdict, for new trial, and for additional time within which to file additional grounds for motion for new trial together with supporting affidavits, and from the judgment of the Court of May 20, 1949, against defendants.

GEORGE R. ANDERSEN and
WILLIAM L. PAUL, JR.,
Attorneys for Defendants.

By /s/ WILLIAM L. PAUL, JR.,
Of Counsel.

Copy received June 9, 1949.

[Endorsed]: Filed June 9, 1949. [62]

[Title of District Court and Cause.]

PETITION FOR APPEAL

This Court having overruled defendants' motions for judgment for defendants nothwithstanding the verdict, for new trial, and for additional time within

which to file additional grounds for motion for new trial together with supporting affidavits, and having made and entered its judgment against defendants, all on May 20, 1949; and

The above-named defendants, conceiving themselves aggrieved by the aforesaid orders and judgment of May 20, 1949, in this cause, do hereby appeal from said orders and judgment to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith; and they pray that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said orders and judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; and defendants further pray that the above-entitled Court fix the amount of a cost and/or supersedeas bond, and from the date of such determination allow defendants two weeks within which to secure and file such bonds.

This motion is based on the files and records of this cause.

GEORGE ANDERSEN and
WILLIAM L. PAUL, JR.,
Attorneys for Defendants.

By /s/ WILLIAM L. PAUL, JR.,
Of Counsel.

Receipt of Copy acknowledged.

[Endorsed]: Filed June 9, 1949. [63]

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

Come now the defendants above named and say that there is manifest error in the records, proceedings and judgment of May 20, 1949, and therefore submit the following general assignments of error, in this, to wit:

(1) That the verdict and judgment thereon are contrary to the evidence.

(2) That the evidence is insufficient to support a verdict against either defendant.

(3) That the Court and jury erred in permitting a recovery against the International Union for any alleged damages sustained prior to May 8, 1948.

(4) The verdict is contrary to the evidence in that no alleged damages should have been awarded against the International Union for any period prior to May 8, 1948.

(5) The verdict is against the evidence in that there was no evidence sufficient to hold the International Union liable for any alleged damages sustained by the plaintiff prior to May 8, 1948.

(6) The Court erred in admitting a mass of evidence, throughout the trial, which was objected to by the defendants as hearsay, which evidence was prejudicial to the rights of both defendants herein.

(7) The Court erred in refusing to permit defendant International Union to withdraw its demurrer for the purpose of attacking service upon the International Union through service upon Verne Albright.

(8) The Court erred in holding that the District Court for the Territory of Alaska had jurisdiction over the subject matter of this litigation under the Taft-Hartley Act, said Court not being a court of the United States within the meaning of said Taft-Hartley Act.

(9) Errors of law occurring at and during the course of the trial excepted to by the defendants are as follows:

(a) Plaintiff offered and gave evidence and exhibits, and the Court admitted the same over the objections of defendants that plaintiff had not assumed the collective bargaining contract between Juneau Lumber Mills and Local 16; whereas such evidence and exhibits are incompetent, irrelevant and immaterial and contrary to the parol evidence rule.

(b) Plaintiff offered and gave evidence and exhibits, and the Court admitted over the objections of defendants, parol evidence the purport and effect of which was to vary the terms of the contract of November 3, 1947. (Pltfs. Ex. #2.) [65]

(c) Plaintiff offered and gave hearsay evidence, and the Court admitted the same over objections of defendants, purporting to be evidence of members

of International Woodworkers of America, generally on all issues deemed by plaintiff to be material.

(d) Plaintiff offered in evidence and the Court admitted over the objections of defendants the constitution and by-laws of defendants, being plaintiff's exhibits Nos. 3 and 4, whereas the same are immaterial and irrelevant to the issues of law and fact in this controversy.

(e) Plaintiff offered testimony and the Court admitted over the objections of defendants that plaintiff had recognized IWA M-271 as the exclusive bargaining agent of its employees, whereas such testimony is immaterial, irrelevant and incompetent.

(f) Plaintiff offered testimony and exhibits of Verne Albright and John Barry as evidence of agency binding on defendant International Union, whereas such evidence is incompetent and irrelevant for any purpose, and no sufficient foundation was laid for its introduction.

(g) Plaintiff offered testimony and the court admitted the same over objections of defendants, by the witness Hawkins that plaintiff's mill would have had a certain future capacity, whereas such testimony is opinion testimony and the said witness was not qualified as an expert or shown to have had any familiarity with sawmill operation.

(h) Plaintiff offered testimony and the Court admitted the same over objections of defendants, by the witness Hawkins that longshoring is not a craft, whereas the said witness was not qualified as

an expert on such subject or shown to have any familiarity therewith, and such testimony was opinion, and incompetent.

(i) Plaintiff offered testimony and the Court admitted the same over objections of defendant by plaintiff's witness [66] Kirkham to vary the terms of a written document, namely the IWA minutes of April 1, 1948, and such evidence was incompetent, irrelevant and immaterial.

(j) The same with regard to the testimony of plaintiff's witness Flint.

(k) Plaintiff offered testimony and exhibits and the Court admitted the same over objections of defendants, by the witness Youngs hearsay testimony purporting to be that of Rockwell and Pilfold, and second-handed hearsay testimony through Rockwell and Pilfold of what it is purported Albright and Barry had said; and the same was incompetent and no sufficient foundation was laid for its introduction.

(l) Plaintiff offered testimony and exhibits and the Court admitted the same over objections of defendants by the witness Prawitz of what purported to be market prices of lumber but in the form of a compilation, but the said witness and plaintiff had failed and neglected to make available in any manner the things upon which such compilation was based, and thereby the defendants were denied the right of cross-examination of said witness, and his testimony was incompetent.

(m) Plaintiff offered testimony and the Court

admitted the same over objections of defendants, by the witness Schultz that members of Local 16 refused to handle plaintiff's lumber but such testimony was immaterial and irrelevant to any of the issues of the controversy and incompetent as hearsay; and also the witness testified based purely on hearsay regarding an alleged investigation as to whether lumber could or could not be unloaded in various other ports.

(n) Plaintiff offered testimony and the Court admitted the same over objections of defendants, by the witness Adams that members of Local 16 refused to handle plaintiff's lumber but such testimony was immaterial and irrelevant to any of the issues of the controversy.

(10) Errors of law occurring at the trial and excepted to by defendants, in this:

(a) Defendants offered Exhibt C generally, and Exhibit D for Identification generally, in evidence, and the testimony of the witness Pearson, all on the subject of offers made by Local 16 to bargain and its right to bargain generally with plaintiff, but the Court refused the same, although the same was a material issue in the controversy.

(b) The same with regard to offers of Local 16 to arbitrate and the duty of plaintiff to accept and/or initiate such arbitration in this controversy and in the matters out of which it arose, generally.

(c) The same with regard to the fact that plaintiff, after IWA M-271 refused to bargain concerning longshore work at plaintiff's plant.

(d) The same with regard to the fact that plaintiff never challenged the representation of Local 16 after IWA M-271 refused to bargain concerning longshore work at plaintiff's plant.

(e) The Court erred under the Taft-Hartley Act in not instructing the Jury as requested by the defendants that the IWA and ILWU could adjust work claims between themselves.

(f) That the said Taft-Hartley Act as applied to the facts of this case, in relation to trade unions adjusting work claims between themselves is unconstitutional and was unconstitutionally applied.

(11) Errors of law occurring at the trial, and excepted to by defendants, in this, that the Court failed and refused to instruct the jury as requested by defendants in their written instructions duly submitted to the Court and numbered one through thirteen and number fifteen, for the reasons stated in such [68] exceptions, and particularly as follows:

(a) Defendants' requested instruction No. 1 states the public policy of the Labor Management Relations Act, 1947, hereinafter called the "Acts," and is material on the issue of whether plaintiff created or maintained the events in controversy to such an extent that plaintiff should not be permitted to maintain this action; and further on the issue of whether plaintiff reasonably acted to mitigate its damages.

(b) Defendants' requested instruction No. 2, for reasons similar to those stated in paragraph (a) hereof; and for the further reason that said Act is

applicable only to the territorial limits of the United States and not to the Dominion of Canada.

(c) Defendants' requested instruction No. 3 states that persons or their representatives have a right to ask for work and crafts have a right to organize, either or both of which the jury could have found to be controlling, to define the actions or objections of defendants or defendant Local 16, and consequently a corresponding duty of plaintiff to bargain and/or arbitrate the controversy or its causes with defendant Local 16, and require a verdict for defendants.

(d) Defendants' requested instruction No. 4 states matters of law upon which the jury could have found on the evidence that plaintiff purposely created and maintained the events in controversy or failed and refused to mitigate its damages.

(e) Defendants' requested instruction No. 5 defines free speech, coercion and intimidation, all of which were issues of fact in evidence, to such an extent that the jury on the evidence would have found for defendants if they had been instructed as requested.

(f) Defendants' requested instruction No. 6 fully states the law of agency as the same was at issue, and thereby the jury would have returned a verdict for the defendant [69] International Union.

(g) Defendants' requested instruction No. 7 states the precisoh with which damages must be proved, and had the jury been so instructed it would have returned a verdict for defendants or at the most nominal damages for the plaintiff.

(h) Defendants' requested instruction No. 8 states the law of succession of labor contracts and also the law of adoption thereof, and the parties' mutual duties to bargain which would have flowed therefrom, and the jury would have found from the evidence that plaintiff was either successor to the Juneau Lumber Mills contract with defendant Local 16 or had adopted such contract, from either of which would have arisen the duty of plaintiff to bargain and/or arbitrate with defendant Local 16 over the events in controversy; and the plaintiff's failure and refusal so to do, would have required a verdict for defendants.

(i) Defendants' requested instruction No. 9 states the law relating to mitigation of damages, which, from the evidence, would have required the jury to return a verdict for defendants or at the most a verdict for nominal damages.

(j) Defendants' requested instruction No. 10 states the law with regard to whether plaintiff created and maintained the events in controversy upon which evidence the jury would have returned a verdict for defendants, since it was uncontroverted that plaintiff failed and refused to make use of its remedies provided in Section 9 of the Act.

(k) Defendants' requested instruction No. 11 states the law with regard to the creation and existence of a labor contract and its interpretation, and therefrom the jury could have found upon the evidence that there was a labor contract in existence covering longshore work between plaintiff and de-

fendant Local 16, which was a material point in issue, and the same was interpreted by all to cover longshore work; and found a verdict for defendants. [70]

(l) Defendants' requested instruction No. 12 states the policy of the Act regarding the creation of labor contracts and settlement of all labor controversies, upon which from the evidence the jury could have found that plaintiff failed and refused to fulfill its legal duties to bargain and to use the grievance settlement facilities of the federal government, and thereby would have returned a verdict for defendants.

(m) Defendants' requested instruction No. 13 states the policy of the Act and the effect thereof as stated in paragraph (l) hereinabove.

(n) Defendants' requested instruction No. 15 states the law and the effect thereof as mentioned in paragraph (e) hereof.

(12) Errors of law occurring at the trial, and excepted to by defendants, in this, that the Court instructed the jury as follows:

(a) In Instruction No. 4, the Court in paragraphs 1, 3 and 6 thereof stated the law of agency so narrowly as to confuse the jury and thus require them to return a verdict against defendant International Union.

(b) In Instruction No. 6, the Court instructed on the law of conspiracy, on which there was no issue of fact at all, and thereby the jury was confused and returned a verdict against defendants.

(c) In Instruction No. 11, the Court instructed the jury that Exhibit C was in evidence for a limited purpose only, whereas it was in evidence generally; and furthermore, it was in evidence on a material issue of fact whether a contract existed between Juneau Lumber Mills and Local 16 and between plaintiff and Local 16.

(13) Errors of law occurrring at the trial and excepted to by defendants, in this, that the Court gave supplemental instructions to the jury after it had deliberated 21 hours, which [71] amounted to a direction to the jury to return a verdict for plaintiff without grounds therefor, and which said instructions incorrectly stated the law.

(14) Supplemental Instruction No. 2, in addition to being part of the directed verdict, erroneously instructed the jury that certain facts were admitted; whereas, the only purpose of the picketing as the evidence showed was to seek negotiations with the company.

(15) The Court erred in Supplemental Instruction No. 2 in erroneously stating to the jury that the International could be liable for damages sustained prior to May 8, 1948; whereas, no evidence was introduced tending to show or prove any act of the International prior to said date.

(16) The Court erred with respect to Supplemental Instruction No. 2 in erroneously stating to the jury that the International could be held liable for acts prior to May 8, 1948, if it assisted and

abetted Local 16 after May 8, 1948, which statement is contrary to the law and the facts.

(17) The Court erred in Supplemental Instruction No. 3 in that: First, the Court erroneously stated the law of ratification; secondly, erroneously stated the law with respect to agency; and thirdly, erroneously stated that there was no issue for the jury to decide as to Local 16.

(18) With respect to Supplemental Instruction No. 4, the instruction is an oversimplification in a statement of the law with respect to the case and finds no support in the evidence.

(19) The Court erred in Supplemental Instruction No. 5 in the manner following: First, the first paragraph of said instruction erroneously informed the jury that if the International participated in any manner in bringing about the refusal of Local 16 to work products, the Local and the International would be liable. That the words "in any manner" are entirely misleading [72] in relation to the facts of the case and erroneously stated the law. Secondly, that paragraph 2 of said instruction is erroneous in that it depends for validity upon the first paragraph which erroneously states the law to the jury.

(20) The Court erred in holding, in effect, that the said Act and the Court's interpretation of said Act with regard to the use of free speech and speech generally by Local 16 is constitutional and that it does not arbitrarily abridge the same.

(21) The Court erred in overruling defendant International Union's motion for a directed verdict.

(22) The Court erred in ruling that the affidavit of Albright introduced by plaintiff was not generally binding on plaintiff.

(23) The Court erred in overruling defendant Local 16's motion for a directed verdict.

(24) The Court erred in overruling at all, and in the manner and in the scope with which it did, defendants' motion for additional time within which to file additional grounds for motion for new trial and to file affidavits in support thereof in that defendants were wholly prevented from investigating whether the jury had followed the instructions of the Court and had not arrived at their verdict by unlawful means, such as agreeing among themselves in advance to be bound by a quotient verdict, a division among themselves of a consideration of respective portions of the evidence, and had not arrived at their verdict from passion or prejudice against defendants; and had arrived at their verdict from the evidence and not matters not in evidence.

(25) The Court erred in not allowing defendants' motion for judgment notwithstanding the verdict.

(26) The Court erred in not allowing defendants' motion for a new trial.

(27) The Court erred in rendering judgment for plaintfff without notice to defendants. [73].

(28) The Court erred in rendering judgment in favor of plaintiff and against the defendants or either of them.

Wherefore, defendants pray that the judgment may be reversed.

GLADSTEIN, ANDERSEN;
RESNER & SAWYER.

WILLIAM L. PAUL, JR.,

HENRY RODEN,

By GEORGE A. ANDERSEN,
Attorneys for Defendant.

[Endorsed]: Filed June 9, 1949. [74]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL, FIXING COST BOND AND SETTING TIME FOR SETTLEMENT OF BILL OF EXCEPTIONS

On this 9 day of June, 1949, this cause came on regularly to be heard upon the petition of the defendants above named for the allowance of an appeal on behalf of defendants from the judgment heretofore made and entered on May 20, 1949, rendering judgment for plaintiff in the sum of $750,000 against both defendants herein and for fixing the amount of the cost bond on said appeal and for setting a time within which to settle a bill of exceptions; the Court being duly advised in the premises

does hereby find that said judgment is one from which appeal can be taken, the cost bond herein should be fixed in the sum of $250.00, and 90 days allowed within which to settle a bill of exceptions.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the appeal of said defendants from said judgment be, and the same is hereby, allowed to the United States Court of Appeals for the Ninth Circuit; that a certified copy of the transcript of record, pleadings, proceedings and other necessary documents of this matter be transferred, duly authenticated, to the Clerk of the United States Court of Appeals for the Ninth Circuit at San Francisco, California; that the cost bond be and hereby is fixed in the sum of $250.00; that ninety days be and hereby is allowed within which to settle the bill of exceptions.

Done at Juneau, Alaska, this 9 day of June, 1949.

GEORGE W. FOLTA,
Judge.

[Endorsed]: Filed June 9, 1949. [75]

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men By These Presents That We, International Longshoremen's and Warehousemen's Union and International Longshoremen's and Warehousemen's Union, Local 16, as principals, and

United States Fidelity & Guaranty Company as surety, are held and firmly bound unto the United States of America in the full and just sum of Two Hundred and Fifty ($250.00) Dollars to be paid to the said United States of America; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 8th day of June, 1949.

Whereas, lately at the District Court in the First Judicial Division at Juneau, in a suit pending between the above-entitled appellants and appellee, a judgment was rendered against the said appellants, and the said appellants having filed in said Court a Notice of Appeal, Petition for Allowance of Appeal, and Assignment of Errors, to reverse the judgment in the aforesaid suit on appeal to the United States Circuit Court of Appeals to be holden at San Francisco, State of California, on the 15 day of September, 1949, or at any time thereafter. (G. W. Folta,)

Now, the condition of the above obligation is such, that if the said appellants shall prosecute their appeal to effect, and satisfy the judgment in full, together with costs, interest and damages for delay, if for any reason the appeal is dismissed or if judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest and damages as the appellate court may adjudge and award, if it fail to make its plea good, [76] then the

above obligation is void; else to remain in full force and virtue.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER,

By GEO. ANDERSEN,
Atttorneys for Defendant.

WILLIAM L. PAUL, JR.,

GEORGE ANDERSEN and

WILLIAM L. PAUL, JR.,

Attorneys for the Principals, International Longshoremen's and Warehousemen's Union and International Longshoremen's and Warehousemen's Union, Local 16.

....,
Agent for U. S. Fidelity & Guaranty Company.

UNITED STATES FIDELITY & GUARANTY COMPANY,

[Seal] By M. E. MONAGLE,
Its Attorney-In-Fact.

Attest:

M. E. MONAGLE,
Its Agent.

[Endorsed]: Filed June 9, 1949. [77]

[Title of District Court and Cause.]

CITATION ON APPEAL

The President of the United States to the Above-Named Plaintiff (Appellee), Juneau Spruce Corporation, and to N. R. Banfield of Faulkner, Banfield and Boochever, Its Attorneys, Greetings:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco, in the State of California, within forty days from the date of this writ, pursuant to an appeal, filed in the Clerk's Office of the District Court for the Territory of Alaska, Division Number One, at Juneau, wherein the above-entitled appellants are defendants and the above-entitled appellee is plaintiff, to show cause, if any there be, why the judgment in such appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Done at Juneau, Alaska, this June 9, 1949.

/s/ GEORGE W. FOLTA,
Judge.

Copy received June 9, 1949.

[Endorsed]: Filed June 9, 1949. [78]

[Title of District Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the Above-Entitled Court:

You will please prepare transcript of record in the above-entitled cause, to be filed in the Office of the Clerk of the United States Court of Appeals for the Ninth Circuit, sitting in San Francisco, California, upon the appeal heretofore perfected to said Court, and include therein the following papers and records, to wit:

(1) Second Amended Complaint.

(2) Special Appearance to Quash Service of Summons and Affidavit of Verne Albright attached thereto.

(3) Order of Court Denying Motion to Quash Summons.

(4) Demurrer of both defendants.

(5) Motion for Leave of International Longshoremen's and Warehousemen's Union to Withdraw Demurrer, together with Affidavit of Germain Bulcke attached thereto.

(6) Motion for Certificate.

(7) Motion for Certificate by Local 16.

(8) Order of Court Overruling Demurrer and Denying Motions.

(9) Answer and Affirmative Defense (Local 16).

(10) Minute Order of April 27, 1949, showing answers running against Second Amended Complaint and new allegations deemed denied.

(11) Answer (International Union).

(12) Reply (of plaintiff to affirmative defense of Local 16).

(13) Defendants' requested instructions.

(14) Instructions of Court. [79]

(15) Motion for new trial.

(16) Motion for Judgment for Defendants Notwithstanding the Verdict.

(17) Motion for Additional Time Within Which to File Additional Grounds on Motion for New Trial.

(17a) Orders of May 20, 1949, overruling motions mentioned in 15, 16 and 17 above.

(18) Judgment.

(19) Notice of Appeal.

(20) Petition for Appeal.

(21) Assignments of Error.

(22) Order Allowing Appeal and Fixing Cost Bond.

(22a) Cost Bond.

(23) Citation.

(25) Same as Praecipe.

(26) Stipulation on Printing of Exhibits stipulated, and exhibits therein stipulated.—Not filed. P. M.

(27) Praecipe.

This transcript is to be prepared as required by law and the rules and orders of this Court and the Court of Appeals for the Ninth Circuit, and is to be forwarded to said Court at San Francisco, California, on or before 40 days from the allowance of

appeal filed herein, to wit, the ..... day of ....., 1949.

GLADSTEIN, ANDERSEN, RESNER & SAWYER.

WILLIAM L. PAUL, JR.,

HENRY RODEN.

By /s/ WILLIAM L. PAUL, JR.,
Attorneys for Defendants.

Dated: This ..... day of ....., 1949.

Receipt of Copy acknowledged.

[Endorsed]: Filed June 9, 1949. [80]

[Title of District Court and Cause.]

SUMMONS

To International Longshoremen's and Warehousemen's Union, and International Longshoremen's and Warehousemen's Union, Local 16, Defendants, Greetings:

In the Name of the United States of America, You, and each of you, are hereby commanded to be and appear in the above-entitled Court, holden at Juneau, in said Division of said Territory and answer the complaint filed against you in the above-entitled action, within thirty days from the date of the service of this summons and a copy of the said complaint upon you, and if you fail so to appear

and answer, for want thereof, the plaintiff . . will take judgment against you, and each of you, for the sum . . specified in said complaint, and will apply to the Court for the relief demanded therein, a copy of which said complaint is herewith served upon you, and which relief demanded is for judgment against each of you in the sum of $193,000.00 and $10,000.00 attorneys' fees and Plaintiff's costs and disbursements herein.

And you, the United States Marshal of Division No. 1 of the Territory of Alaska, or any Deputy, are hereby required to make service of this summons upon the said defendant . ., and each of them, as by law required, and you will make due return hereof to the Clerk of this Court within forty days from the date of its delivery to you, with an endorsement hereon of your doings in the premises.

In Witness Whereof I have hereto set my hand and affixed the Seal of the above Court, at Juneau, Alaska, this 20th day of October, A. D. 1948.

J. W. LEIVERS,
Clerk.

By P. D. E. McIVER,
Deputy. [81]

[Title of District Court and Cause.]

RETURN ON SUMMONS

I Hereby Certify that the Summons in the above-entitled action dated October 20, 1948, attached hereto, was served upon the defendant International Longshoremen's and Warehousemen's Union, an Unincorporated association, on the 21st day of October, 1948, at Cordova, Alaska, by delivering a copy thereof and a copy of the complaint filed in the above-entitled action, both certified by N. C. Banfield as attorney for plaintiff as true copies of the respective originals, to Verne Albright in his capacity as agent and representative of said defendant.

Witness my hand at Cordova, Alaska, this 21st day of October, 1948.

JAMES H. PATTERSON,
U. S. Marshal.

By Mc E. EDMONDS,
Deputy.

[Endorsed]: Filed October 23, 1948. [82]

[Title of District Court and Cause.]

AMENDED REPLY

Comes now the plaintiff and in reply to the affirmative defense of the defendant, International Longshoremen's and Warehousemen's Union Local 16, the plaintiff admits and denies the allegations thereof as follows:

I.

Plaintiff admits the allegations of paragraph numbered 11 in said defendant's affirmative defense.

II.

Plaintiff admits the allegations of paragraph numbered 12 of said defendant's affirmative defense.

III.

Plaintiff admits the allegation contained in paragraph numbered 13 of said defendant's affirmative defense.

IV.

Plaintiff admits the allegations of paragraph numbered 14 in said defendant's affirmative defense.

V.

Plaintiff has insufficient knowledge regarding the statements made in paragraph numbered 15 of said defendant's affirmative defense to form a belief regarding the same and therefore denies each and every allegation of said paragraph except that plaintiff specifically denies that Local 16 has been

or now is a party to a collective bargaining agreement with all employers engaged in business along the waterfront in Juneau, Alaska, and further denies that members of Local 16, since the commencement of its operations, have been employees of the company by virtue of said agreement. [83]

VI.

Plaintiff denies the allegations contained in paragraph numbered 16 of said defendant's affirmative defense.

VII.

Plaintiff admits the allegations of paragraph numbered 17 of said defendant's affirmative defense except that plaintiff denies that the employees assigned to load lumber aboard said barges usually worked in a different appropriate collective bargaining unit than the one to which the members of Local 16 belonged, denies that the members of Local 16 were ever its employees, and denies that Local 16 constituted an appropriate bargaining unit of plaintiff's employees.

VIII.

Plaintiff admits the allegations of paragraph numbered 18 of said defendant's affirmative defense except that plaintiff denies that the assertion to the company alleged in said paragraph was made with the acquiescence and consent of I.W.A. Local M-271.

IX.

Plaintiff admits the allegations contained in para-

graph numbered 19 of said defendant's affirmative defense.

Wherefore, plaintiff prays that said affirmative defense be dismissed and held for naught, and that plaintiff be given relief as prayed for in plaintiff's complaint.

FAULKNER, BANFIELD & BOOCHEVER.

By N. C. BANFIELD,
Of Counsel for Plaintiff.

United States of America,
Territory of Alaska—ss.

I, Freeman Schultz, of Juneau, Alaska, being first duly sworn on oath according to law, depose and say:

I am the executive vice-president of Juneau Spruce Corporation, and its manager; I have read the foregoing complaint, know its contents, and the facts stated therein are true and correct as I verily believe.

/s/ FREEMAN SCHULTZ.

Subscribed and sworn to before me this 25th day of April, 1949.

[Seal] /s/ N. C. BANFIELD,
Notary Public for Alaska.

My Commission expires Aug. 21, 1950.

Receipt of Copy attached.

[Endorsed]: Filed April 27, 1949. [84]

[Title of District Court and Cause.]

VERDICT No. 1

We, the Jury, duly impanelled and sworn to try the above-entitled cause, find for the plaintiff and against both defendants and assess plaintiff's damages in the sum of $750,000.00.

Dated at Juneau, Alaska, this 13th day of May, 1949.

E. K. GUERIN,
Foreman.

[Endorsed]: Filed May 13, 1949. [85]

[Title of District Court and Cause.]

COUNTER-PRAECIPE

To the Clerk of the Above-Entitled Court:

You will please prepare transcript of record in the above-entitled cause, to be filed in the office of the Clerk of the United States Court of Appeals for the Ninth Circuit, sitting in San Francisco, California, by including therein, in addition to the papers and records designated by defendants in their "Praecipe for Transcript of Record," the following additional papers and records, to wit:

(1) Summons.

(2) Return on Summons dated October 21, 1948, showing service on defendant International Long-

shoremen's and Warehousemen's Union by service upon Verne Albright.

(3) Plaintiff's Amended Reply to Answer of Defendant ILWU Local 16.

(4) Verdict.

(5) Counter-Praecipe—P. M.

Dated this 13th day of June, 1949.

FAULKNER, BANFIELD & BOOCHEVER.

By /s/ N. C. BANFIELD,
Of Attorneys for Plaintiff.

Receipt of Copy acknowledged.

[Endorsed]: Filed June 14, 1949. [86]

[Title of District Court and Cause.]

SUPPLEMENTAL COUNTER-PRAECIPE

To the Clerk of the Above-Entitled Court:

You will please prepare transcript of record in the above-entitled cause, to be filed in the Office of the Clerk of the United States Court of Appeals for the Ninth Circuit, sitting in San Francisco, California, by including therein in addition to the papers and records designated by defendants, in their "Praecipe for Transcript of Record" and "Supplemental Praecipe," and in addition to the papers and records designated in plaintiff's "Coun-

ter-Praecipe," the following additional papers and records, to wit:

1. Plaintiff's Exhibit 2, being Agreement dated November 3, 1947: From the beginning on Page 1 to the end of Article II, all of Article XIII, all of the closing or last paragraph and the signatures.

2. Plaintiff's Exhibit 3, being the Constitution of the International Longshoremen's and Warehousemen's Union: The following portions thereof:

Title Page.

Preamble.

All of Article I, referring to the name of the Union.

All of Article III, referring to the objects of the Union.

All of Article IV, referring to the jurisdiction of the Union.

All of Article V, referring to the powers and duties of local Unions.

Portions of Article VI, referring to officers: Only Sections 1, 3, 4 and 12. [208]

Portions of Article IX, with reference to the per capita tax and assessments: Only Sections 1, 4 and 5.

Portions of Article X, referring to conventions: Only Sections 3, 4 and 7.

Portions of Article XI, referring to charters: Only Sections 1 and 4.

Portions of Article XII, referring to agreements, strikes, etc.: Only Sections 1 and 2.

All of Article XIV, referring to absorption of

members on dissolution of Local.

All of Article XV, referring to referendum votes.

All of Article XVI, referring to withdrawals.

All of Article XVII, referring to transfers.

All of Article XVIII, referring to visiting members, etc.

All of Article XX, referring to union newspaper.

3. Plaintiff's Exhibit 5, being a letter to Mr. E. S. Hawkins from Geo. Schmidt: Only the date, salutation, last paragraph, closing and signature.

4. Plaintiff's Exhibit 11, letter from Pacific Stevedoring and Contracting Company, Ltd., dated August 31, 1948: All of said letter.

5. Plaintiff's Exhibit 14, Juneau Spruce Corporation's financial statement, 28 pages: All of said exhibit.

6. Plaintiff's Exhibit 15, consisting of 18 pages, regarding loss of profits: All of said exhibit.

7. Plaintiff's Exhibit 16, being numerous photographs: All of said photographs.

8. Plaintiff's Exhibit 17, being a statement in Alaska Sunday Press dated June 6, 1948: The heading and date of paper as it appears on Page 8 and that part of an article published on Page 8 commencing on Line 12 of Column 1 of Page 8 and ending at the end of the article.

9. Plaintiff's Exhibit 18, Statement of Mr. Wukich, given to Mrs. Pegues for publication: All of said exhibit. [209]

10. Plaintiff's Exhibit 20, Decision of National Labor Relations Board: All of said exhibit.

11. Plaintiff's Exhibit 24, being a copy of an issue of the Dispatcher, dated September 17, 1948: The heading and date as the same appear on Page 6 and all of the article on Page 6 under the title "Unfair Charges."

12. This Supplemental Counter-Praecipe.

Dated this 13th day of March, 1950.

FAULKNER, BANFIELD & BOOCHEVER.

By /s/ N. C. BANFIELD,
Of Attorneys for Plaintiff.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 14, 1950. [210]

[Title of District Court and Cause.]

ORDER SETTLING BILL OF EXCEPTIONS.

Defendants-appellants herewith present as their bill of exceptions the entire transcript of testimony (except voir dire, and opening and closing statements of counsel) taken at the trial of this cause, and pray the same be settled and allowed.

Dated April 11, 1950.

/s/ WILLIAM L. PAUL, JR.,
Of Attorneys for Appellants.

No objection as to form. April 11, 1950.

N. C. BANFIELD,
Of Attorneys for Appellee.

ORDER

The foregoing Bill of Exceptions is correct and is hereby settled, allowed and approved.

April 13, 1950.

/s/ GEORGE W. FOLTA,
Judge.

[Endorsed]: Filed April 13, 1950. [211]

[Title of District Court and Cause.]

SUPPLEMENTAL PRAECIPE

You will please prepare transcript of record in this cause, to be filed in the Office of the Clerk of the United States Court of Appeals for the Ninth Circuit, sitting in San Francisco, California, upon the appeal heretofore perfected to said court, and include therein the following additional papers and records, to wit:

1. Bill of Exceptions filed April 11, 1950.
2. Order of allowance of same.
3. This supplemental praecipe.

This transcript is to be prepared as required by law and the rules and orders of this court and the said Court of Appeals, and is to be forwarded to said court at San Francisco on or before May 10, 1950.

/s/ WILLIAM L. PAUL, JR.,
Of Attorneys for Appellants.

Copy mailed to appellee's attorneys at Juneau, Alaska, April 11, 1950.

[Endorsed]: Filed April 11, 1950. [212]

In the District Court for the Territory of Alaska, Division Number One, at Juneau

No. 5996-A

JUNEAU SPRUCE CORPORATION, a Corporation,

Plaintiff,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, an Unincorporated Association, and INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, LOCAL 16, an Unincorporated Association,

Defendants.

REPORTER'S TRANSCRIPT OF RECORD

Be It Remembered, that on the 27th day of April, 1949, at 2:00 o'clock p.m., at Juneau, Alaska, the above-entitled cause came on for trial before a jury, the Honorable George W. Folta, United States District Judge, presiding; the plaintiff appearing by Norman Banfield and Manley B. Strayer, of its attorneys; the defendant International Longshoremen's & Warehousemen's Union appearing by George R. Andersen, of its attorneys, and the defendant International Longshoremen's & Warehousemen's Union, Local 16, appearing by William L. Paul, Jr., Henry Roden and George Andersen, its attorneys; both sides having announced they

were ready to proceed; empanelling of a jury was commenced and the jury, having been duly admonished by the Court before and after subsequent recesses and adjournments, was duly sworn to try the cause on the 28th day of April, 1949, the trial having reconvened at 2:00 o'clock p.m. with all parties present as heretofore; and

Thereupon, a motion by Mr. Paul for the exclusion of witnesses was allowed by the Court with the qualification that each party might have one witness of their choice remain and that each party would see that the order would be obeyed; Mr. Strayer made the opening statement to the jury in behalf of the plaintiff; Mr. Paul made the opening statement to the jury in behalf of the defendant International Longshoremen's & Warehousemen's Union, Local 16; Mr. Andersen made a supplemental opening statement to the jury in behalf of the defendant, International Longshoremen's & Warehousemen's Union; and thereafter it was stipulated between the parties that the International Longshoremen's & Warehousemen's Union is a labor organization; and counsel for the plaintiff requested counsel for the defendants to provide copies of the constitution of the International Longshoremen's & Warehousemen's Union and of the International Longshoremen's & Warehousemen's Union, Local 16, and the names of the officers of the International Longshoremen's & Warehousemen's Union and of the International Longshoremen's & Warehousemen's Union, Local 16, and counsel

for the defendants stated they would check on those matters.

Whereupon, the trial proceeded as follows: [2*]

EUGENE S. HAWKINS

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. Will you state your full name?

A. Eugene S. Hawkins.

Q. Did you occupy any position with the Juneau Spruce Corporation?

A. Yes; as General Manager.

Q. During what time were you General Manager? A. May 1, 1947, to June 1, 1948.

Q. And during that time were you a director of the corporation? A. Yes.

Q. Did you hold any other title?

A. No.

Q. Let me ask you if you remember whether you were Vice President at any time?

A. Yes.

Q. During that whole period? A. Yes.

Q. Mr. Hawkins, were you here when the Juneau Spruce Corporation was incorporated?

A. Yes.

Q. And for what purpose was it incorporated?

Mr. Paul: Your Honor, I think the articles of

* Page numbering appearing at bottom of page of original Reporter's Transcript.

(Testimony of Eugene S. Hawkins.)

incorporation would show the purpose of the corporation, and the articles of incorporation would be the best evidence.

The Court: Objection overruled.

A. To produce and manufacture lumber.

Mr. Andersen: Let the record show the objection of either one is the objection of all.

The Court: Yes.

A. To produce and manufacture lumber in the Territory of Alaska, and the sale of such.

Q. Did the Juneau Spruce Corporation purchase any equipment or properties with which it could engage in that business? A. Yes.

Q. What did it purchase?

A. A sawmill, remanufacturing and retail yards located in Anchorage, Fairbanks and Juneau, and a logging camp and logging equipment located in Edna Bay and other places in Southeastern Alaska.

Q. Up at Fairbanks what did the Corporation buy up there?

A. A sawmill and retail yard and buildings and equipment there.

Q. And what did it buy at Anchorage?

A. A retail yard, buildings and equipment.

Q. Now, the operations at Fairbanks, by whom and under what name was that operation conducted prior to the purchase by [4] the Juneau Spruce Corporation?

A. The Independent Lumber Company.

Q. And what was the Independent Lumber Company?

(Testimony of Eugene S. Hawkins.)

A. The Independent Lumber Company was a partnership owned by Roy Rutherford and Roy Ferguson.

Q. Now, what was the—who owned the retail yard at Anchorage?

A. The Juneau Lumber Mills.

Q. And the sawmill here, will you describe the physical layout of the properties in Juneau; that is, where they are and the extent that was purchased?

A. Well, they cover—they are within an area of about three miles in the vicinity of Juneau. Eleven hundred feet of waterfront and dock on South Franklin, and log storage areas north and south of Juneau and across the channel.

Q. And now, tell us what was included as the main parts of the sawmill property at Juneau.

A. A sawmill, and remanufacturing and retail yard.

Q. What do you mean by remanufacture, Mr. Hawkins?

A. That includes everything with the exception of the actual sawing of the logs. There is no breakdown at any definite point.

Q. You mean, if it is cut into a smaller size and planed, that is what you call remanufacturing? A. Yes.

Q. Was there a retail yard at Juneau? [5]

A. Yes.

Q. Who owned the properties at Juneau?

(Testimony of Eugene S. Hawkins.)

A. The Juneau Lumber Mills, Incorporated?

Q. And purchased by the Juneau Spruce Corporation from the Independent Lumber Company at Fairbanks and the Juneau Lumber Mills, Incorporated, at Juneau? A. That is right.

Q. Was there a written agreement under which that was taken over? A. Yes.

Q. I will ask you if this is the agreement?

Mr. Andersen: May we see it, please?

A. Yes. Yes, it is.

(The document was handed to counsel for defendants.)

Mr. Andersen: Rather than clutter the record, do you want a stipulation?

Mr. Banfield: We want it in evidence, I would like to have this marked for identification.

The Court: Can't you have it marked as an exhibit?

Mr. Banfield: Yes, I will offer it as an exhibit.

The Court: There is no use having it marked first for identification.

Mr. Banfield: I would like to offer this document as Plaintiff's Exhibit in Evidence.

The Court: If there is no objection, it may be received [6] as Plaintiff's Exhibit No. 1.

Mr. Banfield: I might call the Court's attention—there is an exhibit marked Exhibit No. 1. It was not in this case.

The Court: I assume the legend on it would show it was not received in this case. If it is re-

(Testimony of Eugene S. Hawkins.)

ceived later on, it will be appropriately marked, and then it couldn't be confused.

Clerk of Court: It has been marked Plaintiff's Exhibit No. 1.

Mr. Banfield: I would like to call the jury's attention to certain portions of the agreement at this time. "This agreement made this 30th day of April, 1947, by and between Juneau Lumber Mills, Inc., a corporation organized under the laws of Alaska, and Independent Lumber Company, a co-partnership consisting of Roy Rutherford and Roy Ferguson doing business at Fairbanks, Alaska, collectively called 'First Party' herein, and Juneau Spruce Corporation, a corporation organized under the laws of Alaska, hereinafter called 'Second Party.'" It provides: "First party agrees to execute and deliver to second party, its successors and assigns, a deed conveying to second party all real and personal property of whatsoever nature and wheresoever located owned by it or in which it has any interest at the time of executing this agreement on April 30, 1947, at 5:00 p.m., excepting moneys on hand, in banks, or accounts, bills or notes receivable and owing to [7] first party included but not limited to the following: The sawmill, yards, and properties of first party at Juneau"—then it goes on—I think counsel will not object—and includes boats, logging camp and various equipment, and that the possession of this property will be given to the Juneau Spruce Corporation April

(Testimony of Eugene S. Hawkins.)

30, 1947, with a quitclaim deed, and various terms regarding the price here, which is computed on a formula of $595,000.00 plus the cost of inventories and the cost of unprocessed logs and the cost of merchandise on hand and supplies and certain equipment, etc., all of which had to be added after the inventories were taken. "All operations up to the close of business on April 30, 1947, shall be for the account of first party and all operations after that date shall be for the account of second party." Then it says, "It is mutually understood and agreed that first party was unable to complete and to deliver" a deed, and it would be done later, and a certain amount of money would be withheld, and the transfer of the actual documents would take place later. Now, it states here that the "First party agrees that," that is Rutherford and the Juneau Lumber Mills and Ferguson, "to the extent it is able to do so, it will make available, transfer and assign unto second party all private and governmental contracts and contract rights, unfilled orders, leases, permits, easements and other rights and privileges possessed by or used by first party or Juneau Logging Company or Juneau [8] Motorship Company," those being subsidiary companies mentioned in the agreement, "in connection with the businesses now or heretofore operated by them, in so far as the same may be necessary or convenient, for the use of second party in continuing the business heretofore carried on by first party,

(Testimony of Eugene S. Hawkins.)

Juneau Logging Company or Juneau Motorship Company." There are certain conveyances regarding liabilities and insurance policies, and then it is stated: "It is expressly understood that first party is not assigning to second party and second party is not accepting or assuming any collective bargaining or labor agreements which may exist between first party and its employees except with respect to the return transportation fare above noted." That was a former provision. Mr. Rutherford advanced money when they brought the men up, and they would agree to pro-rate that fare. "And that second party does not assume and shall not be responsible for any claims or demands for wages, back pay, over-time, travel time, social security industrial accident compensation or other claims of employees arising out of first party's operations prior to the close of business on April 30, 1947." In witness whereof, the parties executed the agreement.

Mr. Andersen: May it please the Court, we assumed it was a simple transfer, and I want to object to the—that is, a transfer of property from one to the other—we object to any self-serving part, and whether contracts were kept or taken [9] over as a matter of fact, cannot be shown by this document as to that.

The Court: It seems to me that ground is rather untenable. It was at a time before there would be anything self-serving or the making of a declaration.

(Testimony of Eugene S. Hawkins.)

Mr. Andersen: That is between the parties—Juneau Spruce and Juneau Lumber. The agreement was between them. But I object. It has no binding on us. It is a document to which we are not a party, and we are not bound by any provision. That is the basis.

The Court: There is no statement that it is for that purpose. I assume it is to show the extent of the operations and properties of the plaintiff.

Mr. Andersen: That is what I assumed it was.

The Court: I don't know of any other purpose —and perhaps the purpose to show they didn't take over any labor contracts.

Mr. Banfield: Yes, sir. For the purpose of showing exactly what kind of a deal this was, to show the transfer of physical assets and certain leases and permits and orders that people had placed for lumber, but nothing in labor contracts or accounts receivable, or nothing of that nature. The contract speaks for itself, and Mr. Hawkins will be questioned as to whether or not the agreement was carried out. We offer it for the purposes of all it shows. [10]

The Court: Objection is overruled. You may proceed.

Q. Mr. Hawkins, was the transfer of these properties and the take over by the Juneau Spruce Corporation carried out in the manner specified in this contract of April 30th?

Mr. Andersen: I object as calling for a conclu-

(Testimony of Eugene S. Hawkins.)

sion and opinion of the witness unless some foundation is laid, may it please the Court.

The Court: It doesn't seem to call for a conclusion. He can be asked if he knows.

A. Yes.

Q. You were the active General Manager of the plaintiff after April 30th? A. Yes.

Q. You know what was done and wasn't done to live up to this contract? A. Yes.

Q. And you know that all terms of this contract were carried out? A. Yes.

Mr. Andersen: I object. The questions are leading.

The Court: They may be leading, but it is pretty difficult to state, without taking a great deal of time, in any other form. I think the question has been answered.

Mr. Andersen: Answered twice, I think. [11]

Q. Now, did the Juneau Lumber Mills, Incorporated, continue—I might ask you this. Did Mr. Rutherford continue to stay in Juneau any time thereafter, after this take over? A. Yes.

Q. What was he doing here and for how long?

A. He was taking care of the business of his corporation.

Mr. Andersen: I am going to object. It is incompetent, irrelevant and immaterial, may it please the Court.

The Court: It is pretty difficult to say at this stage whether it is or not. I assume it is preliminary.

(Testimony of Eugene S. Hawkins.)

Mr. Banfield: It is, your Honor. I would like to have the man geographically placed so I can show the witness was in communication with him and then develop what we wish to between the parties.

The Court: Objection is overruled.

Q. How long did Mr. Rutherford continue here during that time?

A. As near as I can recall, about two months.

Q. Let me ask you—where did he spend most of his time?

A. At his bookkeeper's or—I don't know what all he was besides bookkeeper—it wasn't at the plant.

Q. Wasn't at the plant?

A. Wasn't at the plant.

Q. Did you talk to Mr. Rutherford from time to time after this take over?

A. Yes; very frequently. [12]

Q. Did you talk to him before the take over?

A. Yes.

Q. Did you have any conversations with Mr. Rutherford before the take over as to what unions were doing the work in and around the mill?

A. Yes.

Q. What did he tell you?

Mr. Andersen: I object to that as hearsay, may it please the Court.

The Court: Yes; I think it is hearsay.

Q. Now, Mr. Hawkins, when you took over the

(Testimony of Eugene S. Hawkins.)

mill there, what did you do with respect to hiring employees?

A. Well, we worked out a formula with Mr. Rutherford and posted notices in the mill whereby all former employees of the Juneau Lumber Mills who desired to work for the Juneau Spruce Corporation could sign up in the office on the first day of May, or the first day—I don't recall if that was a Sunday or not.

Mr. Andersen: May it please the Court, from the witness' answer, if there is something in writing, I am going to object to this as not the best evidence.

The Court: He isn't questioned as to the contents of any writing, so I think your objection is premature.

Mr. Andersen: I thought he was.

The Court: He was asked as to what was done.

Q. You say you posted notices in the mill?

A. Yes.

Q. Who posted notices in the mill?

A. Both the Juneau Spruce Corporation and the Juneau Lumber Mills.

Q. And how long did you stay on there as Manager after the take over?

A. Until June 1, 1948.

Q. Did you retain any copies of these notices that were posted?

A. No; not that I know of.

Q. Do you have any knowledge of how long they remained posted?

(Testimony of Eugene S. Hawkins.)

A. They were never taken down, only through the process of repairing the mill and being brushed off. No effort was made to take them down.

Q. Were there notices there when you ceased to be Manager?

A. I don't recall of seeing any there at that time.

Q. Now, Mr. Hawkins, what was the effect of this notice?

Mr. Andersen: I think that calls for the witness' conclusion, and I object on that ground.

The Court: As I understand it, these notices are not available now?

Q. Are these notices available?

A. Not to my knowledge.

The Court: Or copies of them? [14]

A. Not to my knowledge.

Mr. Andersen: I submit the objection is good. The witness doesn't know. Apparently he hasn't been here since that time.

The Court: I was about to ask if anybody else knows if they are available or copies of them. What about their availability, or copies, so far as your other witnesses are concerned?

Mr. Banfield: The persons we have had search have been unable to find any.

The Court: Objection is overruled. You may proceed.

Q. Mr. Hawkins, what did the notice of the Juneau Lumber Mills, Incorporated, state?

(Testimony of Eugene S. Hawkins.)

A. It stated that the Juneau Lumber Mills, Incorporated, had sold out their assets to the Juneau Spruce Corporation effective midnight April 30th, and their employment would cease as of that time.

Q. What did the notice of the Juneau Spruce Corporation state?

A. That the Juneau Spruce—the new owners of the Juneau Lumber Mills—office would be open for the signing up of employees, of all former employees, on that specific day, and the mill wasn't operated that day.

Q. What day was that to the best of your recollection?

A. May 1st, to the best of my recollection.

Q. If May 1st was a Sunday, would it have been May 2nd? [15]

A. It would have been May 2nd.

Q. Was there two days of no operation?

A. Yes.

Q. What was the purpose of no operation?

A. To give the men time to be signed up and established on the records of the Juneau Spruce Corporation as such.

Q. Did any longshoremen sign up?

A. Not that I recall; none that I know of.

Q. Let me ask you at this time, Mr. Hawkins, did the Company at any time in hiring men inquire as to whether or not a man belonged to a union?

A. No.

Q. Did it make any difference to the Company whether they did or not? A. No.

(Testimony of Eugene S. Hawkins.)

Q. Has the Company ever employed any persons who happened to be member of the I.L.W.U. as regular employees of the mill?

Mr. Andersen: To which company do you refer, counsel?

Mr. Banfield: Juneau Spruce.

A. I don't know of a specific case. It could have happened. We didn't inquire. Any employee who requested employment was employed when there was a vacancy for same.

Q. The men who signed up there, were they all members of some [16] union?

A. No, I wouldn't say they were all members of some union.

Q. Do you know that from talking with the men that didn't belong to any union? A. Yes.

Mr. Andersen: That calls for a conclusion and opinion of the witness, may it please the Court.

The Court: He was asked whether he knew.

Mr. Andersen: Well, of course, if you ask a person whether he knows, that throws the door wide open to his conclusions, and, as a short time ago a judge characterized as the most dangerous question that can be asked a witness, it calls for his conclusion when he is allowed to state whether he knows. The question obviously calls for his conclusion.

The Court: If it calls for a conclusion, you can cross-examine him on it, but in the meantime it doesn't seem necessarily to be a conclusion or expression of opinion. There are a lot of answers that

(Testimony of Eugene S. Hawkins.)

certainly would fall within that class as being opinions. For instance, a witness is allowed to state what speed a car was going.

Mr. Andersen: That is a well-known exception to the rule.

The Court: This may be an exception too. In any event it isn't one of the issues, as I see it. Objection is overruled. [17],

Q. Mr. Hawkins, did you have any negotiation with any union of which the members worked at the plant after May 1st? A. Yes.

Q. What union was that? A. I.W.A.

Q. What was the local, do you remember?

A. M-271, I believe.

Q. How did that meeting come about; what was said and done?

A. Well, shortly after the take over we—a committee of the I.W.A. come to the office and requested that we negotiate a contract, and in as much as——

Mr. Andersen: May it please the Court, this is all hearsay.

The Court: It isn't hearsay yet. He said "negotiated."

Mr. Andersen: He said they came and wanted to do thus and so.

The Court: Acts; not what anybody said. The testimony is that they came and did something. That is not hearsay.

Mr. Andersen: I understood the witness said

(Testimony of Eugene S. Hawkins.)

they came and wanted to do thus and so. Obviously it is hearsay, the witness' characterization. I don't want to appear captious.

The Court: So far as the one word he mentioned—"wanted"—it could be hearsay. While it is desirable to skip [18] over that and ask him what was done, these are rather more or less, it seems to me, unimportant details.

Q. Mr. Hawkins, after this committee called on you, what was done at the meeting?

A. I told them that whenever they——

Mr. Andersen: Again, may it please the Court, it is hearsay, so far as both defendants are concerned.

The Court: Yes. He is not answering the questions by testifying what was done but is attempting to say what was said.

Q. Mr. Hawkins, you are not permitted to testify as to what someone else said to you a certain time. You can only tell what was done and what the gist of the conversation was, in other words, what transpired at this meeting and the purpose of it. Now, what was the purpose of this meeting so far as the Juneau Spruce Corporation was concerned?

A. It is a little bit difficult to describe that without saying what I said and what they said and what we agreed upon.

Q. What was agreed?

A. It was agreed——

Mr. Andersen: And again, may it please the

(Testimony of Eugene S. Hawkins.)

Court, it is a conclusion what was agreed upon. The agreement would be the best evidence.

The Court: He merely said they agreed. [19]

Mr. Andersen: And still it is hearsay so far as we are concerned. In another sense it is not admissible. This is not a controversy with the I.W.A. The I.W.A. is not concerned in this case, as I read the pleadings. If it is not hearsay, I still think it is not admissible, may it please the Court, and, if there was an agreement, it must be in writing and that is the best evidence.

The Court: I thought the I.W.A. was alleged to be the certified bargaining agent.

Mr. Andersen: No, your Honor.

Mr. Banfield: We made an opening statement that there were certain agreements and on November 3rd we made a written agreement. These culminated in the written agreement. Counsel knows they were verbal.

Mr. Andersen: Sorry; I don't know that.

Mr. Banfield: I could take a lot of time and say, "Was it written?" He would say, "No." I would ask, "Was it verbal?" He would say, "Yes." And then I would ask, "What was the verbal agreement?" It is perfectly competent to testify what was the greement verbally and——

Mr. Andersen: That is only hearsay.

Mr. Banfield: To call it hearsay, both sides agreed to hearsay; and that is ridiculous.

Mr. Andersen: I don't believe what I say is

(Testimony of Eugene S. Hawkins.)

ridiculous. I don't want to appear ridiculous or say anything [20] ridiculous. I assume there is a written agreement. May it please the Court, if there was a written agreement that gets it out of hearsay. Then again there is the objection of immateriality. I make both. He apparently wants the witness to testify what was agreed upon at some meeting. Obviously the agreement is his conclusion and also hearsay and also immaterial.

The Court: How would you prove an oral agreement?

Mr. Andersen: By the best evidence; by the parties. But we are not a party to that agreement.

The Court: It might be collateral matter, but it is part of the plaintiff's case. Objection is overruled.

Q. Mr. Hawkins, was it a verbal or written agreement to which you testified?

A. Verbal.

Q. What was the agreement?

Mr. Andersen: Pardon me. Can't I have the date, please?

Mr. Banfield: He said shortly after the take over.

A. That I would negotiate a contract with them when they had shown evidence they represented a majority of the employees that we had.

Q. Was there any agreement made as to how soon they would do this?

Mr. Andersen: The same objection, your Honor.

(Testimony of Eugene S. Hawkins.)

A. As soon as possible.

Mr. Banfield: When there is an objection, you have to wait.

The Court: The same ruling.

Q. Did they claim at that time to represent all the employees in the plant; I mean, did they claim that all the employees in the plant were members of this union, or just part?

A. They claimed the majority.

Q. And did they later prove to you that a majority of the employees of the plant were members of I.W.A., M-271? A. Yes.

Mr. Andersen: The same objection, may it please the Court; what the union was proving to this man, and now again this gentleman's conclusion.

The Court: Could you not attain the same purpose by just asking him what was done?

Mr. Banfield: Yes.

A. We were presented with signed slips authorizing pay roll deductions to be paid to the I.W.A. from a majority of the employees on record as employees of that date and thereby established the fact they represented the majority of the employees there.

Q. Now, thereafter, Mr. Hawkins, in dealing with the I.W.A. how did you recognize them, or what did you recognize them to be? [22]

A. Exclusive bargaining agent.

Q. For whom?

(Testimony of Eugene S. Hawkins.)

A. For all Juneau Spruce employees.

Q. And tell me, after that when did you have meetings with the I.W.A., or did you have any?

A. Yes.

Q. When were they?

A. It was very shortly after that that they brought in an agreement which they had drawn up, and I told them I would read it and consider it at the earliest possible date and give them an answer.

Q. Did it take them very long to get these slips that you spoke of? A. No.

Q. What happened after that with regard to this agreement with the I.W.A.?

A. We talked several times about the provisions in it. It was revised and changed several times, and ultimately I sent—they sent a copy to their International, and I sent a copy to Mr. Card of Coos Bay, and then it was sent back to the International again and finally signed up on November 3rd.

Q. Signed on November 3, 19——

A. 1947.

Q. 1947. I will ask you, Mr. Hawkins, if this is a copy of [23] the agreement you stated was signed on November 3, 1947? A. Yes; this is it.

Mr. Andersen: It may go in subject to the same general objection.

The Court: The record may show the same objection and the same ruling.

Mr. Andersen: Yes, your Honor.

(Testimony of Eugene S. Hawkins.)

Mr. Banfield: We offer the agreement as an exhibit.

The Court: It may be admitted as Plaintiff's Exhibit No. 2.

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit 2.

Mr. Banfield: This agreement provides in part as follows: "The general purpose of this Agreement is in the mutual interest of the Employer and the employees to provide for the operation of the plant hereinafter mentioned, under conditions which will further to the fullest extent possible the safety of the employees, economy of operation, quality and quantity of output, elimination of waste, cleanliness of the plant and protection of property. It is recognized by this Agreement to be the duty of the Employer and employees to cooperate fully, individually and collectively, for the advancement of said conditions.

"Whereas, the parties hereto desire to establish the standards of hours of labor and other conditions under which [24] the employees shall work for the Employer during the term of this Agreement and desire to regulate mutual relations between the parties hereto:

"Now, Therefore, this Agreement is made and entered into this 3rd day of November, 1947, by and between the Juneau Spruce Corporation, Juneau, Alaska, hereinafter designated as the Employer, and Local M-271, International Woodworkers of

(Testimony of Eugene S. Hawkins.)

America, Juneau, Alaska, hereinafter designated as the Union.

"Witnesseth:

"That in consideration of the mutual promises and understandings made in good faith both parties hereby agree to and with each other, to-wit:

"Article I—Union Recognition

"The Union is hereby recognized as the sole and exclusive collective bargaining agent for all the employees of the Employer in its sawmill, manufacturing and retail departments at Juneau, Alaska, excluding superintendents, foremen and office employees, on all matters pertaining to wages, hours of labor and other conditions of employment in the aforesaid plant, subject to the provisions of Article II as provided in this Agreement."

This agreement goes on and sets up a Shop Committee to deal with the employer, and provides for a method of settling disputes whereby, "Any employee or group of employees having a grievance against the Employer may present his or their complaint [25] to his or their foreman, who shall attempt to settle the grievance or dispute amicably and promptly. It is understood that any settlement arrived at shall not be inconsistent with the terms of this Agreement, and further that the Union representative shall be given opportunity to be present at such conference." "In the event that machinery provided in Article III, Sections (a) and (b) shall fail to adjust the grievances, the services of the

(Testimony of Eugene S. Hawkins.)

Territorial Department of Labor shall be requested within forty-eight (48) hours thereafter. If within a reasonable time the Commissioner shall have notified the parties of interest of failure to adjust said grievance there shall be no stoppage of work for a period of forty-eight (48) hours thereafter.

"(d) Any settlement arrived at by the methods designated in Article III, Sections (a), (b) and (c) shall be subject to acceptance by the Employer and the Union, and if accepted shall be binding on the Employer, the employee or employees involved, and the Union.

"(e) There shall be no strike sanctioned or approved by the Union and no lockout instituted by the Employer during the life of this Agreement until every means of settlement provided for in this Agreement has been exhausted. At no time shall Union employees be required to act as strikebreakers or go through any picket line which is recognized by the Union as legal, however, Union employees whose work is required for [26] protection of property and equipment during any shutdown, shall stay on the job if requested by the Employer and shall not be considered as strikebreakers."

This agreement goes on and provides for hours of labor and seniority, for hiring and discharging of employees, holidays, vacations, and union security. "It is understood and agreed that the following provisions relative to union security shall not become effective until the National Labor Relations Board shall have certified, as required by Section

(Testimony of Eugene S. Hawkins.)

8 (a) (3) of the Labor Management Relations Act, 1947, that a majority of the employees have voted to authorize such an agreement:

"(a) All employees who are members of the Union thirty (30) days after the effective date of this Agreement, and all employees who thereafter become members of the Union, shall as a condition of continued employment maintain membership in good standing in the Union."

Then the wage provision, and a termination clause providing that it be effective "until April 1, 1948, and shall be continued thereafter for yearly periods unless written notice of termination or revision is given by either party, subject to the terms set forth in this Article."

Whereupon, the jury was duly admonished and Court adjourned until 10:00 o'clock a.m., April 29, 1949, reconvening as per adjournment, with all parties present as heretofore [27] and the jury all present in the box; whereupon, the trial proceeded as follows:

Mr. Banfield: May we have permission to call a witness out of order? We have a representative of the Local Union we would like to put on this morning.

The Court: You may call him.

Mr. Andersen: Is it your intention to prove certain documents?

Mr. Banfield: Yes.

Mr. Andersen: I have a copy of the Constitution you wished. I have also been advised this Constitution to which you refer is apparently the one here. You wanted a list of names of the officers. I will read into the record——

Mr. Banfield: For 1947-48?

Mr. Andersen: Yes; during the time you mentioned. I am doing this in the interest of time. The officers of Local 16, Juneau, defendant union, in 1947 were as follows: President, A. Wukich; Financial Secretary, first half, A. Burgo; second half, C. Hellonen; Recording Secretary, first half, D. McCammon; second half, A. Laiti. 1948: President, first half, A. Wukich; second half, E. Pearson; Recording Secretary, first half, A. Laiti; second half, Herb Lenz; Financial Secretary, first half, C. Hellonen; second half, A. Laiti. 1949: President, E. Pearson; there was no recording secretary; Financial Secretary, Alex Laiti. [28]

Mr. Strayer: I was going to ask that these be marked for identification so we can identify them in the record. The Constitution of the International should be Plaintiff's Exhibit 3 and——

The Court: Could they not be introduced at this time?

Mr. Strayer: So far as the International Constitution, yes; but I haven't had an opportunity to see the Local Constitution before. I don't know if it is material. I will look it over during recess.

Mr. Andersen: Which is which?

Mr. Strayer: 3 will be the International Constitution.

Mr. Andersen: For identification; and 4 for Identification will be the Local; is that correct?

Mr. Strayer: Yes.

The Court: I doubt now whether the record shows now that it was stipulated by the parties that the persons whose names you called off, and their titles, were the officers of the Local. I think that that mention of it, implying a stipulation, was not read into the record.

Mr. Andersen: I think he was taking the word of counsel that that was the fact.

Mr. Strayer: I have no independent information. It may be agreed that if an officer of the Local were called he [29] would state that those were the officers at that particular time.

The Court: The record may so show.

Mr. Strayer: For the record, the document, Plaintiff's Exhibit 3, the Constitution of International Longshoremen's & Warehousemen's Union, is admitted in evidence by stipulation?

Mr. Andersen: We will object.

Mr. Strayer: You will stipulate to Identification, Plaintiff's Exhibit 3, and that it is a true copy of the Constitution of the International Longshoremen's & Warehousemen's Union, as amended to April 11, 1947?

Mr. Andersen: No. As of that day.

Mr. Strayer: It says on the face, "As Amended to April 11, 1947."

Mr. Andersen: Whatever it says.

Mr. Strayer: And may it also be stipulated for

the record that document, Plaintiff's Exhibit 4 for Identification is a true copy of the Constitution and By-Laws of Local 16 of the International Longshoremen's & Warehousemen's Union, and dated June 30, 1942, Revised February 26th, and it states, March 6 and 20, 1944.

The Court: The question remains as to the admissibility.

Mr. Strayer: Yes, your Honor. [30]

CLARENCE HELLONEN

called as a witness on behalf of the plaintiff, being first duly sowrn, testified as follows:

Direct Examination

By Mr. Strayer:

Q. Will you state your name.

A. Clarence Hellonen.

Q. Are you a member of the International Longshoremen's & Warehousemen's Union?

A. I am a member of I.L.W.U., Local 1-16.

Q. Local 1-16 or Local 16?

A. Local 16; District 1, Local 16.

Q. Do you hold any official position with that Local?

Mr. Andefsen: May I interrupt, counsel? You also requested in your subpoena the presentation of certain documents. This officer is not in charge of any such documents. If you wish, I will arrange with the proper officer of the Local to produce such documents if they are available.

Mr. Strayer: Thank you. That will be all, Mr. Hellonen.

(Witness excused.)

EUGENE S. HAWKINS

resumed the witness stand.

Direct Examination
(Continued)

By Mr. Banfield:

Q. Mr. Hawkins, you testified about a meeting of the I.W.A. Local representatives and of bargaining with them. Now, [31] I would like to know, if at that meeting with the I.W.A. after they had shown, as you testified, that they were representative of over half the employees, whether there was any understanding or agreement reached there regarding any old contracts of your predecessor company, Juneau Lumber Mills?

Mr. Andersen: May it please the Court, I desire to object. The question calls for conclusions. To ask for any understanding, it enters this area of complete definability. I would like again to object to the question which calls for the witness' conclusions.

The Court: Well, I don't know whether counsel means a mere understanding or an agreement, but it seems to me that the witness would be competent to state whether as a result of that discussion or conference there was an agreement of that kind or

(Testimony of Eugene S. Hawkins.)

some other kind arrived at, and he may answer yes or no.

Mr. Andersen: May I again respectfully state, all the witness can testify is what was said. Whether it was an agreement or something else is not for the witness to determine, but for another body to determine. I don't believe he should characterize what is an agreement or understanding; I don't think he should. He should say what was said.

The Court: I thought you were objecting to the details rather than the effect. [32]

Mr. Andersen: I don't want the witness to testify to conclusions. I want him to testify to what was said, and then, if it is relevant or irrelevant, it can go in or stay out.

Mr. Bantfield: We agree; that is correct. In negotiations of this kind, it is perfectly competent to say what was said.

The Court: I misapprehended the nature of your objection.

Mr. Andersen: That was the nature of my objection yesterday.

Q. Was anything said in this conference——

Mr. Andersen: May I interrupt? Would you put the date of the conference if possible?

Q. The conference, Mr. Hawkins, after the I.W.A. had proved to you that they represented over half of the employees of the plant; that is the conference we are talking about.

(Testimony of Eugene S. Hawkins.)

Mr. Andersen: The date please, counsel.

Mr. Banfield: The witness testified that some time had elapsed after May the 1st and that it was shortly after that and——

Mr. Andersen: I think I will object that no foundation has been laid. I request that a proper foundation be laid.

The Court: A proper foundation be laid for what? [33]

Mr. Andersen: Time, place, persons present.

The Court: Well, I think that the time should be made more certain if possible.

Q. Mr. Hawkins, going back, you testified yesterday about your taking over on May 1st?

A. Yes.

Q. Now, how long was it after that that they gave this evidence or proof to you that they represented over half the employees?

A. It was by the time the first pay roll had been made out.

Q. Would that be two weeks, a month, or what?

A. That would be three weeks.

Q. And how long was it after that that the conference was held, the next conference was held with the I.W.A.? A. About a week.

Q. And who was present at this conference?

A. Tim O'Day, Glen Kirkham.

Q. Who was Tim O'Day?

A. The Secretary of the I.W.A.

Q. And who was Mr. Kirkham?

(Testimony of Eugene S. Hawkins.)

A. The President.

Q. Now, at this conference was there any agreement reached—what was said by the I.W.A. with respect to how you could operate in the future?

Mr. Andersen: To which we will object, may it please [34] the Court, as hearsay and immaterial.

The Court: I thought you wanted that to come out.

Mr. Andersen: I said, your Honor, the proper way was to determine what was said, then I would object as to admissibility. I object now that it is immaterial and hearsay.

The Court: The statement you made a while ago is incompatible with hearsay. If you want facts or statements made there which would show whether there was any contract or agreement which resulted therefrom, it seems you are precluded from objecting that it is hearsay.

Mr. Andersen: Well, your Honor, this witness is the plaintiff's witness, and I have never heard it said yet that the other side of the case, that the other side wanted evidence to go in. Counsel is trying to prove some sort of case and trying to put in some sort of evidence. As I read this case and understood the issues, I fail to see the materiality of this line of questioning; I not only fail to see the materiality, but I contend respectfully, your Honor, that it is hearsay and inadmissible for that reason.

(Testimony of Eugene S. Hawkins.)

The Court: Well, you mean whether or not an agreement resulted there of the kind implied by his questions is immaterial?

Mr. Andersen: I consider it such, your Honor, under the issues as framed.

The Court: Objection is overruled then on that ground. I am still unable to understand your objection of hearsay in view of your statement a few moments ago that the witness relate what was said instead of conclusions.

Mr. Andersen: That is true. When this witness testified an agreement was made, that is his conclusion. Whether an agreement was in fact made or not, I said the proper way, and counsel agreed, was not by the witness boldly saying he entered into a contract, but by stating what was said.

The Court: But when he attempts to do that, you object.

Mr. Andersen: That brings up the second question—materiality.

The Court: I have ruled on that. Proceed.

Q. Mr. Hawkins, what was said by the I.W.A.?

Mr. Andersen: The same objection, may it please the Court.

The Court: Overruled.

Mr. Andersen: And rather than repeat, the objection may run to the line of questioning, with the same ruling?

The Court: The record may show that.

Q. What was said by the I.W.A. representa-

(Testimony of Eugene S. Hawkins.)

tives regarding the manner in which you would operate at the plant; that is, what did they offer, and what did you offer; tell us what was done? [36]

A. We had quite a conference, and all I could relate was the ultimate conclusion of that conference in which it was mutually agreed——

Mr. Andersen: Again I object, may it please the Court, to this witness' characterizing—as the witness stated, "All I can do is give my conclusion." I submit it is inadmissible in the light of our last discussion, may it please the Court.

The Court: Well, I have tried to accommodate the views of counsel here, but since it now appears that the agreement that, it was alleged, resulted followed perhaps hours of discussion at which thousands of things might have been said, it is impractical to put in all those things and it is unreasonable to expect the witness to relate each statement made by anybody that participated in the discussion and, hence, I think we will have to go back to the rule that the witness may state the conclusion. You may cross-examine him on it.

Q. Will you relate what was agreed as a result of your negotiations?

A. That the Juneau Spruce Corporation would continue to operate under the same rate of pay and the same hours of work as had been enforced under the Juneau Lumber Mills, and that other conditions would be talked over and agreed upon as they came up during the course of a forming of the new contract. [37]

(Testimony of Eugene S. Hawkins,)

Q. Now, did anything come up with respect to who they would bargain for? A. Yes.

Mr. Andersen: I am going to object to that. It is a leading question, leading and suggestive, may it please the Court.

The Court: Objection is overruled. It is a preliminary question.

A. Yes.

Q. And did you meet regarding it?

A. Yes.

Q. And what was decided?

A. It was decided that they would represent all of our employees with the exception of those on our tugboats and in our logging camps.

Q. Did it result in a binding and definite understanding on that point? A. Yes.

Mr. Andersen: I am going to move the last question be stricken and the last answer be stricken; the same objection, may it please the Court.

The Court: Maybe the "binding" might be eliminated from it, but the answer that there was an agreement reached will stand.

Q. Did you consider it to be a binding agreement? [38]

Mr. Andersen: To which I object as calling for his conclusion.

The Court: You might ask him, did the parties operate under it.

Q. Did you operate under it as a binding agreement? A. Yes.

(Testimony of Eugene S. Hawkins.)

Q. And did you live up to that agreement?

Mr. Andersen: The same objection, may it please the Court; and immateriality.

The Court: Objection overruled.

A. Yes.

Q. Now, Mr. Hawkins, as a result of this conference soon after or about a month after the take over of the properties, was there any understanding or agreement reached with respect to whether or not there was any written contract in effect as a holdover from the predecessor company?

Mr. Andersen: I object to the line of questions.

The Court: Repeat the question.

Court Reporter: "Now, Mr. Hawkins, as a result of this conference soon after or about a month after the take over of the properties, was there any understanding or agreement reached with respect to whether or not there was any written contract in effect as a holdover from the predecessor company?"

The Court: Objection overruled.

Mr. Andersen: May we have a foundation laid for [39] this?

The Court: Specifically as to the time.

Mr. Banfield: This is a conference about a month after the take over.

The Court: Is it the same conference?

Mr. Benfield: Yes.

A. Yes.

Q. What was that agreement?

A. We explained——

(Testimony of Eugene S. Hawkins.)

Mr. Andersen: The same objection.

The Court: The same ruling.

A. We explained our take-over agreement basically to the president and secretary, and they were able to see whereby we didn't take over the predecessor's agreement.

Mr. Andersen: I move that be stricken.

The Court: That last part is incompetent and will be stricken.

Q. What did they say respecting that?

A. That is basically what they said that, after we explained our position, that they could see where it would necessitate working out a contract with the Juneau Spruce Corporation.

Mr. Andersen: The same objection as to his conclusion, and I move it be stricken.

The Court: Objection overruled. [40]

Q. Did they acknowledge it was not binding upon you?

Mr. Andersen: May I interrupt to state to your Honor that there is no showing here that these people can't be produced rather than have hearsay.

Mr. Banfield: We could produce Mr. Tim O'Day and the other one. As the Court well knows, it is impossible to question three at one time, only one at a time, and we are entitled to question any one of them as to what was said and done in negotiations between the two parties resulting in a verbal agreement.

The Court: Objection is overruled.

(Testimony of Eugene S. Hawkins.)

Mr. Banfield: And also, may it please the Court, if we come to the point of a meeting and no agreement, we are still entitled to show what was done between them.

The Court: You may proceed.

Mr. Banfield: Repeat the question, please.

Court Reporter: "Did they acknowledge it was not binding upon you?"

The Court: It isn't clear to me what is referred to in that question—it not being binding.

Mr. Banfield: If the Court please, yesterday we had the testimony here regarding the fact that there had been a former agreement between the Juneau Lumber Mills and the I.W.A. The question is, did they acknowledge it was not binding on the Juneau Spruce Corporation. [41]

Mr. Andersen: As I understand it, I thought you were talking about four weeks after the take over. I made an objection. Counsel said it was the same conference. The only question was referring to four weeks after. Now you are talking about a written agreement. I don't wish to be confused. I am sure the jury doesn't wish to be confused.

Q. Mr. Hawkins, at these conferences was there any discussion of a prior agreement?

Mr. Andersen: I object to any question about subjects in the conference. I submit under the rules of evidence, if you wish to interrogate a witness about meetings, by practice and custom you

(Testimony of Eugene S. Hawkins.)

lay a foundation—the time, place and persons present; otherwise, as your Honor stated, we will be unable to cross-examine and will be going all over it and wasting the time of the Court.

The Court: I think for the benefit of all parties, I think it should appear clearly, the occasion as well as those present and also the particular agreement that was under discussion or that resulted. I know it isn't clear to me.

Q. Now, Mr. Hawkins, at the meeting between the Juneau Spruce Corporation and the I.W.A. one month after the take over, that would be about June 1st, at which Mr. Kirkham, the President of the I.W.A., and—who is the other—Mr. O'Day, as Secretary of the I.W.A., and yourself, as Manager of the Juneau Spruce Corporation, was present, was there any [42] discussion regarding the prior labor contract or a labor contract between the I.W.A. and Juneau Lumber Mills, Incorporated?

A. Yes.

Q. Tell us what was said regarding that contract.

A. That was brought up in the explanation of our take-over agreement, that the Juneau Lumber Mills, Incorporated, was a corporation still in existence, and Mr. Rutherford, the President, had announced to us, the Juneau Spruce Corporation, that he intended to remain an active corporation, and that their agreement with the Juneau Lumber Mills, therefore, was still binding on the Juneau Lumber Mills and it would necessitate us in negotiating a new agreement with them.

(Testimony of Eugene S. Hawkins.)

Mr. Andersen: May it please the Court, I want to move that that be stricken. Obviously it is a conversation the witness had with Mr. Rutherford, as I understand the answer.

Q. No. This was the discussion, this entire discussion, and what was said was what happened at this meeting? A. Yes.

Q. Who explained that the Juneau Lumber Mills was still in existence? A. I was——

Mr. Andersen: I assume my objection heretofore [43] might run to this line of questioning, and the same ruling of the Court?

The Court: Yes.

Q. With respect to this agreement, was it acknowledged and agreed by both parties, the Juneau Spruce Corporation and the I.W.A., that this former contract was not binding upon the Juneau Spruce Corporation?

Mr. Andersen: I object as calling for the conclusion of the witness.

Mr. Banfield: It is a question of fact, your Honor.

The Court: Objection overruled.

Q. Was it agreed or wasn't it?

A. Yes.

Q. Now, Mr. Hawkins, were you present in Juneau all the time during May, June and July of 1947? A. Not all the time, no.

Q. During your absence and during those three months who was in charge of the office and the

(Testimony of Eugene S. Hawkins.)

management of the Company's affairs at Juneau?

A. George Schmidt.

Q. Now, Mr. Hawkins, during July—tell us first, what was the first meeting you had with any longshoremen's representatives, these representatives of Local 16? A. In July.

Q. And was that—at whose request was that meeting? [44] A. At their request.

Q. And who was present?

A. Mr. Ford and Mr. Wheat and another fellow—I don't recall his name.

Mr. Roden: July, 1947?

Q. Yes; July, 1947. Mr. Hawkins, who did they represent themselves to be?

A. The officials of the Local Longshoremen's Union 1-16.

Q. What did they claim to have authority to do?

A. To negotiate an agreement for certain work of the Juneau Spruce Corporation.

Q. And what did they ask that this work should include in this agreement? Did they ask that an agreement be negotiated? Answer that first.

A. Yes.

Q. Just relate now the whole conversation that took place there between these two gentlemen and yourself.

Mr. Andersen: I would like to interpose a separate objection so far as the International is concerned, may it please the Court, that there is no foundation for the admission of any of this evidence in so far as the International is concerned.

(Testimony of Eugene S. Hawkins.)

I assume the Court will want to take the objection and not rule at the present time.

The Court: Unless the International is connected up with it, the jury will be instructed——

Mr. Andersen: I just want to preserve the record, may it please the Court, at this time.

Q. Go ahead, Mr. Hawkins.

A. Well, they wanted first——

Mr. Andersen: May I against object on the ground that the witness has a habit of characterizing—such as, "They wanted to." I don't want to make too many objections. I would like for the witness to say what was said rather than his opinion of what was said. It is more effective—what was said, rather than what he concludes they said.

Q. What did they say, Mr. Hawkins?

A. They said they wanted to negotiate an agreement both coastwise and local for the work of handling our products from the first place of rest to and across the bull rail.

Q. Now, did they explain to you what they meant by a coastwise agreement? A. Yes.

Q. What was that?

A. That was a general agreement which was in effect in Pacific Coast ports.

Q. And did they explain what they meant by a local agreement?

A. That was one which pertained only to the Juneau Port here and special provisions for this locality.

(Testimony of Eugene S. Hawkins.)

The Court: Did you say a moment ago "general" or "gentlemen's" agreement? [46]

A. General.

Q. Now, Mr. Hawkins, was this to be in one agreement or in two separate agreements?

A. Two separate——

Q. What did they say?

A. Two separate agreements.

Q. Now, did they explain what they meant by they wanted to work between, you said, the last place of rest and the bull rail—the first place of rest and the bull rail; did they explain that?

A. Yes.

Q. What did they explain it to be?

A. In effect when we stacked lumber in our yard from the main sawmill, that would be considered the first place of rest. From there it would be taken, unstacked and taken to our remanufacturing plant and processed to the customer's specifications, and taken to the bull rail or in the vicinity underneath our crane to accumuate in lots assigned to the customer and the use of our carriers and lift trucks to facilitate this movement.

Q. Trace that through and show just what the longshoremen wanted to do.

The Court: First, maybe he better explain the significance of the bull rail in the operation.

Q. What is the buil rail? [47]

A. That is the face of the dock.

Q. In other words, the edge of the dock on the water side? A. Yes.

(Testimony of Eugene S. Hawkins.)

Q. Now, will you trace through and explain what it was, which operations and which work, the longshoremen said they wanted to do?

A. Unstacking the lumber from our storage area, delivering it to the remanufacturing plant, and assembling it at the place where we accumulated these customers' orders in lots.

Q. Now, what would the individual workers be doing; would they be handling it by hand or machine or what?

A. They would be handling it practically altogether by lift trucks and carrier—lumber carrier.

Q. You mentioned you take your lumber and make it to the specifications of the customers, I believe. Will you explain what you mean by that?

A. We cut entirely on orders.

Q. Pardon me. You mean after the order is received? A. Yes.

Q. Go ahead.

A. We manufacture that in the main sawmill, then accumuate it in our storage area until the order was cut out in the rough, then put it through the remanufacturing plant for processing to the various patterns and grades and [48] lengths, and then accumulate this on the face of our dock in the vicinity of our crane preparatory to loading it on.

Q. You mean to imply this storage area is the whole yard down there? A. Yes.

Q. And it stays out in the yard until you put it back in the remanufacturing plant to groove and plane it for particular orders you have to fill?

(Testimony of Eugene S. Hawkins.)

A. Yes.

Q. Before that, where is particular lumber put, where does it rest next?

A. In the vicinity of our crane on the face of the dock.

Q. How close would that be to the crane?

A. Within reach of its gear.

Q. And then the work you are describing as the longshoremen's work would be taking it into the manufacturing plant for processing and taking it out and putting it in lots under the crane?

A. Yes.

Q. At that time, Mr. Hawkins, how were you disposing of your lumber?

A. The Engineers were taking most of it.

Q. Who were the Engineers?

A. United States Army, Engineers Department.

Q. And how were they taking it? [49]

A. By their carriers from a designated area in our plant.

Q. And were you disposing of any otherwise?

A. Yes.

Q. How? A. By commercial steamship.

Q. Where would that lumber go?

A. That would go mostly to Alaska ports—Anchorage and Fairbanks—some to Seattle and Tacoma.

Q. Now, when the Engineers took it, who drove the carriers that picked it up at your yard?

A. The Engineers' drivers.

Q. They weren't hired or paid by you?

(Testimony of Eugene S. Hawkins.)

A. No.

Q. When it was shipped to Anchorage or Fairbanks, how would it be shipped; that is, what method of carrier?

A. Commercial carrier.

Q. By that you mean steamships?

A. Yes.

Q. Mr. Hawkins, when the steamer took it aboard, where did the steamer dock?

A. At our dock.

Q. And whose tackle would lift it aboard?

A. The steamship tackle.

Q. Now, who would attach the slings to this lumber which was going aboard? [50]

A. The longshoremen.

Q. By whom were they hired for that?

A. By the steamship company.

Mr. Andersen: I ask that answer be stricken. First, it is not the best evidence; and second, it is contrary to the opening statement of counsel. The records of this company would be the best evidence as to who hired those people—of either this company or the other company—it would be the best evidence. There is no showing this is the best evidence available. We say they were hired by this company and it paid the social security and all those charges. Now, I submit that the best evidence is available and should be produced.

Mr. Strayer: He is not talking about shipments by cannery tenders, but about commercial steamship operation.

(Testimony of Eugene S. Hawkins.)

The Court: You mean he misconstrued your opening statement?

Mr. Strayer: Yes.

Mr. Andersen: I still don't think it would be the best evidence. There are records in our possession that this company paid wages, social security and withholding tax on wages for the men doing this work. My basic objection is the best evidence—the pay roll records would be the best evidence.

The Court: You contend that it was the Juneau Spruce Corporation that paid the longshoremen and not the [51] Alaska Steamship Company?

Mr. Andersen: All the longshoremen—it is this, may it please the Court—that from the, all during the time they worked at that dock, where the Juneau Lumber or the Juneau Spruce hired them, they were paid in the same manner, by the same people occupying the premises, whether the Juneau Lumber or the Juneau Spruce. They both called them and paid them in the same way. They paid them in the same way for ten years.

The Court: I have forgotten whether it was the question or answer to which you objected.

Mr. Banfield: He objected on the ground of the best evidence. We have plenty of means of proving how and who paid them and hired them, etc. I would like to withdraw the question and ask this:

Q. Did you hire the longshoremen to attach the slings to the lumber going aboard commercial steam-

(Testimony of Eugene S. Hawkins.)

ers for shipment to the westward? A. No.

Mr. Andersen: Could I ask a question? Do I understand—do you mean whether the Company or this witness personally did it?

Mr. Banfield: The Company.

Mr. Andersen: All right.

Q. Did the Company hire the men to attach the slings to put [52] the lumber aboard commercial steamers for shipment to the westward?

A. No.

The Court: When you say the Company, perhaps you should say the plaintiff.

Mr. Banfield: All right. The plaintiff.

Q. Did the plaintiff pay these men?

A. No.

Q. Now, did you send shipments of Lumber to any other places except ports in Alaska by commercial steamer? A. Yes.

Q. Where did you sell that lumber?

A. At Seattle and Tacoma.

Q. And where did the commercial steamers dock to take that aboard? A. At our dock.

Q. And who transported the lumber to the face of the dock? A. Our yard employees.

Q. Now, these yard employees, what were their duties?

A. To transport lumber to the face of the dock for storage or shipment, or to and from our remanufacturing plant.

Q. What did they do when they weren't doing that particular work?

(Testimony of Eugene S. Hawkins.)

A. They were stacking and unstacking lumber in the storage areas. [53]

Q. Did they have any other duties that you can think of? A. No.

Q. Now, Mr. Hawkins, after it arrived at the face of the dock, who attached the slings to the lumber?

A. You mean on the commercial shipments?

Q. Yes. A. The longshoremen.

The Court: Well, are you distinguishing now, or is this the same thing you asked about a moment ago? Are you distinguishing the shipments to the States from those made to Alaska ports?

Mr. Banfield: May it please the Court, they were handled in exactly the same fashion, except we haven't brought out before who did the dock work on shipments to the westward.

Q. Now, whose tackle hoisted it aboard the steamer? A. Steamship tackle.

Q. Did the plaintiff hire the longshoremen for this work? A. No.

Q. Who stored the lumber in the hold of the ship? A. The longshoremen.

Q. And did the plaintiff hire the longshoremen for that work? A. No.

Q. Did the plaintiff pay the longshoremen for either attaching the slings on the dock——

Mr. Andersen: This will be subject to the same objection.

Q. Or stowing it aboard? A. No.

(Testimony of Eugene S. Hawkins.)

Q. Now, Mr. Hawkins, when you shipped to the westward, who did the work of bringing the lumber up to the bull rail or face of the dock?

A. Our yard employees.

Q. Were your yard employees hired just from time to time by the hour, or were they steady employees? A. They were steady employees.

Q. Now, in this—going back to your conference that you had with the longshoremen at which Mr. Ford and Mr. Wheat were present in July of 1947, how much of this work did they claim that they wanted to do? A. All that work.

Q. And did they contend that you were the employers as to stowing the lumber aboard the boats or attaching the slings?

Mr. Andersen: I object. Counsel said "contend." What did they say?

Q. Did they say they wanted you to hire them on the boats?

Mr. Andersen: I object. I think he can ask the question without putting the words in the witness' mouth.

The Court: It might be pretty difficult to direct his attention to this point without a suggesting or leading [55] question.

Mr. Andersen: Then all examinations would then be through leading questions.

The Court: Not all; but it is obvious in this case it might be. I am not saying it is. It might be difficult to direct his attention to the precise

(Testimony of Eugene S. Hawkins.)

point. If you can do that without leading or suggesting, you may of course do it.

Q. Did the longshoremen ask—did you hire them to do the work on the ships?

Mr. Andersen: I think I will object to that question. I think it is an exceedingly leading question. Why can't he say, what did the longshoremen state with respect to this work?

Mr. Banfield: All right.

Q. Did they state anything, Mr. Hawkins, with regard to attaching slings or working in the hold of vessels; was that the subject of conversation?

A. No.

Q. Now, who did you say that you would do regarding their demands?

A. We couldn't do anything regarding their demands.

Q. Did you state the reasons? A. Yes.

Q. What reasons did you give?

A. That we had agreed, after being shown that the I.W.A. [56] represented a majority of our employees, to consider them the exclusive bargaining agent, and were in the process of negotiating a workable agreement at that time.

Q. Did you give any other reason for this?

A. No.

Q. Now, at that time who was performing the work the longshoremen wanted?

A. Our yard employees.

(Testimony of Eugene S. Hawkins:)

Q. Would it necessitate discharging any of your yard employees if you were to hire longshoremen for that work?

Mr. Andersen: I object. It is incompetent, irrelevent and immaterial.

The Court: Objection overruled.

A. Yes.

Q. How many yard employees did you have down there?

A. About eight.

Q. And how many shifts were you working?

A. We worked one shift part of the time and two shifts part of the time.

Q. And were there eight of each shift, or when you were working two shifts, or just eight each day?

A. When we were on a two-shift basis, we normally had more employees in the daytime than at night because they wasn't able to see, and there were other problems in that, and the day-shift employees did some of the night-shift [57] production work.

Q. In other words, would it be more or less, or more than eight when you were working two shifts?

A. Yes.

Q. And now, Mr. Hawkins, when did you have another meeting with any person representing either of the defendants in this case?

A. In August.

Q. About what time in August; do you know?

A. The very early part of August.

(Testimony of Eugene S. Hawkins.)

Q. And where was that meeting held?

A. In my office in the Juneau Spruce.

Q. And at whose request?

A. The fellow just came in the office and requested to talk to me at that same time.

Q. What was his name?

A. Verne Albright.

Q. Who did he represent himself to be?

A. He——

Mr. Andersen: I object as calling for a conclusion of the witness, may it please the Court.

The Court: Perhaps the question should be what he said.

Q. Yes. What did he say—who he represented?

A. He said he was a representative of the I.L.W.U. International. [58]

Q. Did he state where he lived?

A. Not as I recall.

Q. How long did you talk to Mr. Albright?

A. Quite some time; a couple of hours, I would say.

Q. Was it a friendly conversation; that is, a businesslike conversation; or was it antagonistic? What was the general feeling of the conference?

Mr. Andersen: I object. It should be what was said and done.

The Court: Unless you claim some materiality for the demeanor.

Mr. Banfield: Yes, we do your Honor. We wish to show Mr. Hawkins dealt with members of the

(Testimony of Eugene S. Hawkins.)

union on a business-like basis without antagonism or prejudice whatever, and we think—the conference was of considerable length, as testified—we should be able—we can't show just how he made every statement and every statement that was made in that period of time. We would like to show what the general atmosphere was of both sides.

Mr. Andersen: I think it must be assumed that people conduct themselves as pleasant people.

Mr. Banfield: There is no such presumption.

The Court: I think there is at least a presumption of fact that nothing untoward marked the discussion if it is [59] not brought out, and it dosen't appear to me of any importance or significance how he treated him at this stage of the case.

Mr. Banfield: May it please the Court, it was in the opening statement of Mr. Paul that the Juneau Spruce Corporation took a bitter and antagonistic attitude to the longshoremen and he went on a great length to show how he treated the longshoremen. We wish to show the contrary.

The Court: That may be, but it would be a proper subject to go over in rebuttal but not in your case in chief.

Mr. Banfield: Very well.

Q. Now, what did Mr. Albright say that he wanted?

A. To negotiate a coast-wise contract and also a local contract.

Q. And did he explain what he meant by a coast-

(Testimony of Eugene S. Hawkins.)

wise contract? A. Yes.

Q. What did he explain that to be?

A. It was a general agreement which they had in effect up and down the coast, general provisions covering all the longshore work.

Q. Did he explain what he meant by a local agreement? A. Yes.

Q. And what did he explain that to be?

A. That was an agreement taking care of special provisions peculiar to Juneau, as all ports had a little difference in some manner or other. [60]

Mr. Andersen: To which, may it please the Court, I assume, my same objection runs—no foundation and materiality in so far as the International is concerned, may it please the Court.

The Court: Yes; it is admitted subject to the same reservation.

Q. Mr. Hawkins, what did you say that you would do?

A. I went into some length to explain to him what had transpired in a previous meeting, the first meeting with the Local officials of the I.L.W.U., and we discussed the general thing for quite some time.

Q. But what did you say regarding your agreement or refusal to make these agreements which he wanted?

A. I reiterated my former statement that we couldn't bargain in good faith with the I.L.W.U. in

(Testimony of Eugene S. Hawkins.)

that we had already recognized the I.W.A. as the exclusive bargaining agent.

Q. What particular operations——

Mr. Andersen: Did you say "represented" or "recognized"?

The Court: "Recognized."

Mr. Banfield: I think "recognized" as representative——

Mr. Andersen: He had his hand over his mouth, and I couldn't very well hear him.

Q. Mr. Hawkins, speak loudly enough so we can all hear you. [61] Tell me, what work, particular operations, did Mr. Albright say he wanted to include under this contract?

The Court: Now, which? He spoke of two.

Q. Did he want to include the same work under both? A. He was talking for both.

Q. What work did he want to include?

A. All the work from the bull rail out which went on water-borne equipment, floating equipment.

Q. Now, did he ask you to take over and pay for this work which, you say, you didn't pay for, such as attaching of slings and loading on commercial steamers?

Mr. Andersen: The question is suggestive, may it please the Court.

Mr. Banfield: I want to see if the arrangement of work he wanted——

The Court: Probably it would be preferable to ask him to explain what work Albright wanted

(Testimony of Eugene S. Hawkins.)

and, if he seems to have difficulty recalling any of it, you can remind him of it.

Q. What work did he wish to include under these contracts according to his own statements?

A. The same as I said. He wanted from the bull rail out for everything that went on floating equipment.

Q. Did he say anything regarding this other work in the yards which the longshoremen formerly had requested?

Mr. Andersen: I object. The question fully covered—— [62]

The Court: It seems to me his last answer would exclude that, wouldn't it?

Mr. Banfield: No, it wouldn't. I am asking now if he asked for this work which was requested before.

Q. Let me ask, was there any discussion by Mr. Albright in making statements regarding the work the longshoremen had asked you for in the previous meeting? A. Yes.

Q. What did Mr. Albright say about it?

A. That was part of the lengthy discussion we had, and me telling him what had transpired before and what they wanted and the impracticality of it and we couldn't do it and such, and he said that

(Testimony of Eugene S. Hawkins.)

was asking too much and was unreasonable, that they didn't want that work and really only wanted to work from the bull rail out.

Q. Did they already have the work on the commercial steamers? A. Yes.

Q. Was that through some other employer or someone else, or plaintiff company?

A. Through another employer.

Q. Now, what work was Mr. Albright referring to at this particular time as being work that he wanted to put under the contract?

A. That was loading of supplies, general supplies, for our logging camp, groceries and rigging of all kinds, and just [63] generally.

Q. And with what labor—that is, who had been doing this work loading supplies for the logging camp? A. Our yard employees.

Q. Who would take it from the warehouses to the face of the dock? A. Our yard employees.

Q. And who would operate the crane that would put it aboard? A. Our employees.

Q. And who stored it aboard the boats?

A. Our employees.

Q. What boats would be used?

A. The tugboats that made regular trips to the camp and barges that were towed by them with the stuff aboard.

Q. Who owned these tugs and barges?

A. The Juneau Spruce Corporation.

(Testimony of Eugene S. Hawkins.)

Q. Was there any other work that Mr. Albright was referring to as coming under this contract, proposed contract? A. No.

Q. Was there any discussion at that time regarding the hiring of men to load fishing vessels and other people's small equipment? A. No.

Mr. Andersen: Pardon me. Are you still on the conversation with Mr. Albright? [64]

Mr. Banfield: That is the only one we have been talking about.

Mr. Andersen: I wanted to make certain.

Q. Did he mention that at all? A. No.

Q. Tell me, Mr. Hawkins, you have described your sales to the Engineers and sales shipped by commercial steamers; were there any other sales of merchandise or lumber made by the mill at this time? A. Yes.

Q. What were they?

A. Primarily fish boxes and some lumber.

Mr. Andersen: Could I interrupt just a moment? You are not now talking about any conversation with Mr. Albright?

Mr. Banfield: I am talking about the type of sales.

Mr. Andersen: Are you through with the conversation?

Mr. Banfield: No.

Mr. Andersen: I have difficulty following what he told Mr. Albright. It is difficult to follow the con-

(Testimony of Eugene S. Hawkins.)

versation. When there are continuous other references, it is difficult.

The Court: He is just leading up to something discussed in that conversation.

Mr. Andersen: That is fine. May I interrupt to suggest a narrative by reference—— [65]

Mr. Banfield: I will use any chronological order I please. But I am stating here and now I asked about the conference with Mr. Albright. Now, I said, "at this time," meaning at the time of the conference with Mr. Albright, "was there any other method of selling lumber?" And he is telling us the method at that time.

The Court: You may proceed, and for counsel's benefit you may indicate when you are through with this particular conversation.

Mr. Andersen: That would be helpful all around, your Honor.

Q. You stated, Mr. Hawkins, you sold principally fish boxes, but some lumber, to be delivered on these small boats? A. Yes.

Q. Where did these small boats come from?

A. All over Southeastern Alaska—fish company cannery tenders and fish company boats.

Q. Was a great quantity or a small quantity of sales made that way?

A. A small quantity of sales.

Q. Who would own these various vessels?

A. Various fishing companies.

Q. How did they order the material?

(Testimony of Eugene S. Hawkins.)

A. We would receive the order by mail ordinarily requesting a specific number of boxes and how many pound boxes they [66] should be, and how they would have their boat and barge or boat at our dock at a specific date, and request that we arrange for the stowing of the cargo or boxes aboard their equipment.

Q. Now, when they would come to the dock, who would move the boxes to be shipped and the lumber up to the face of the dock?

A. Our employees.

Q. Who would operate the crane?

A. Our employees.

Q. And who would disengage the slings as they were placed on the small vessels?

A. The longshoremen.

Q. At what point in this delivery program did the transfer of this property take place from you, we will say, to the fishing company?

A. When it was landed on the fish company's vessel, it became their propetry.

Q. When shipping by commercial steamer, when did your obligation end and become the other man's property?

A. We were obligated to deliver lumber to within reach of the ship's tackle.

Q. You could summarize it — as long as the tackle was yours or it was handled by your tackle, you still owned it; and as long as it was handled by somebody else's tackle, somebody [67] else owned it? A. That is right.

(Testimony of Eugene S. Hawkins.)

Q. Now, Mr. Hawkins, who would request these longshoremen to come to work? A. We did.

Q. By that you mean the employees of the Junear Spruce would make the request?

A. Yes.

Q. Who would actually do it?

A. George Schmidt.

Q. And how would it be done?

A. He would call the hiring hall and advise them to have a certain number of employees come to our dock at a specified time for the purpose of stowing cargo.

Q. Would they—all those men—work on the dock or the crane? A. No.

Q. When they finished stowing cargo on the boat, who would pay them? A. We would.

Q. With your company check. A. Yes.

Q. And who would make out the social security return? A. We would.

Q. Who would make out the withholding?

A. We would. [68]

Q. Now, Mr. Hawkins, was there any agreement between yourself and the customers as to who was to pay for this work? A. Yes.

Mr. Andersen: I object. It is incompetent, irrelevant and immaterial as to who may have paid for it. Customers of course always pay for everything. I think we are only concerned here with the relations between the parties, and between this

(Testimony of Eugene S. Hawkins.)

and any third corporation I respectfully submit it is incompetent.

Mr. Banfield: If the Court please, this is a preliminary question to determine an agreement and and then to show exactly how it was done.

Mr. Andersen: I don't think we are interested in an agreement between this company and any other not directly or indirectly interested in this proceeding.

Mr. Banfield: If the Court please, we are entitled to show if we were acting as an agent or how we were acting and what the facts were.

The Court: In loading these small vessels?

Mr. Banfield: Sure.

The Court: Objection overruled.

Q. Was there an agreement between you and the customers? A. Yes.

Q. What was the agreement?

A. That we would—— [69]

Mr. Andersen: Just a moment. I would like to ascertain whether the agreement was in writing. That would be the best evidence.

The Court: Yes.

Q. Was there any agreement in writing?

A. I don't know of it.

Mr. Andersen: I submit, if the witness doesn't know, the best evidence is valid.

The Court: Would it logically follow that because he doesn't know that it was in writing?

Mr. Andersen: The witness referred to an agree-

(Testimony of Eugene S. Hawkins.)

ment by the company, orally or in writing. This witness hasn't been connected with this company for better than a year. He says he doesn't know.

Mr. Banfield: If the Court please, we are still talking about August 1, 1947, at the time of the conference.

Mr. Andersen: He is no longer with the company probably.

The Court: But the question relates to the time he was in charge of the plant and was presumed to know.

Mr. Andersen: At that time, correct. But today he says he don't know whether it is or not. His recollection may not be what it was when he was with the company. If the agreement is in writing, they should produce it. We have a right to see it. It is the best evidence of its terms. [70]

The Court: The agreement doesn't apparently exist from what he says. Objection is overruled.

Q. Do you know of any agreement in writing?

A. No, I don't know of any specific agreement in writing.

Q. You were Manager there for thirteen months? A. Yes.

Q. And at the period we are talking about?

A. Yes.

Q. Now, Mr. Hawkins, what was the arrangement under which you worked?

A. That we of course had a set price for our boxes or lumber, and the customer was billed for

(Testimony of Eugene S. Hawkins.)

that plus any other expenses the company incurred in his behalf, such as longshoring or any other expenses.

Q. Now, how many companies would you say you made deliveries to in this fashion?

A. Oh, I would say a dozen more or less; I don't recall how many; numerous.

Q. Did they always pay for this cost of longshoring in addition to the cost of materials?

A. Yes.

Q. Now, Mr. Hawkins, did longshoremen ever work for the Juneau Spruce Corporation on Juneau Spruce Corporation property? A. Yes.

Q. When was that?

A. Well, at one time the Whiz Packing Company and Engstrom were in dire need of fish boxes at Pelican City in a hurry. There was no commercial steamship to go in there for a considerable time in the future, and we chartered our tugboat to them to deliver as much boxes as it would hold to Pelican City for them.

Q. Do you remember about when that was?

A. That was about July.

Q. What year? A. 1947.

Q. And was it a considerable quantity of merchandise or a small quantity?

A. A considerable quantity; it was all the boat would hold.

Q. Who transported this material to the bull rail? A. Our employees.

(Testimony of Eugene S. Hawkins.)

Q. And who operated the crane?

A. Our employees.

Q. Who disengaged the slings on your boat?

A. The longshoremen.

Q. And who stowed it aboard the boat?

A. The longshoremen.

Q. How many longshoremen were employed, do you know?

A. I don't recall just how many were employed.

Q. One or two, or several? [72]

A. There were several.

Q. Who paid these longshoremen?

A. We did.

Q. And who made the social security and withholding returns? A. We did.

Q. Was there any agreement as to who would pay for this longshoring, you or the customer?

Mr. Andersen: The some objection. It can't be binding on these defendants; that is, their relations with other people can't be binding on the defendants.

The Court: I don't think—except in a remote sense—it just shows the relationship between the longshoremen and the plaintiff. Objection is overruled.

Q. Mr. Hawkins, how were you paid on that instance for materials and longshoring and all services performed?

A. We sold them the boxes f.o.b. Juneau, and chartered the boat to them for a set fee which included the boat charter and longshoring and expenses incorporated in getting the boxes to Pelican City.

(Testimony of Eugene S. Hawkins.)

Q. Now, Mr. Hawkins, did you have any policy with respect to deciding what loading operations would be done by mill employees and which would be done by longshoremen? A. Yes.

Q. What was the policy?

A. That any work being done on our equipment, our cranes and [73] our carriers and our boats and barges and such, would be done by our employees, and any work being done on anyone else's equipment would be done by longshoremen.

Q. Now, why did you vary that practice here when you knew that your men—or that the longshoremen would be working aboard your boat?

A. Because that boat was chartered to this fishing company and that was their desire that longshoremen be employed to stow the boxes and so forth and equipment aboard.

Mr. Andersen: I move that be stricken. It is completely hearsay.

The Court: It doesn't appear to be hearsay.

Mr. Andersen: I submit, your Honor, it is hearsay.

The Court: Objection overruled. But what isn't clear to me is how that differed. Is it only with respect that in the one case the longshoremen handled the tackle from the bull rail, so called, to the deck of the vessel, and in the other they just merely unloaded it aboard the vessel?

Mr. Banfield: If the Court please, I think Mr. Hawkins has described where there were various

(Testimony of Eugene S. Hawkins.)

kinds of shipments—commercial shipments, company boats and on the barges of customers and small boats.

The Court: I understand that. But it isn't clear to me the difference in the method of handling as between their own equipment and the floating equipment of others. [74]

Mr. Banfield: If the Court wishes, I can trace out each particular type of shipment and then show where the property line was in pursuance. Is that what the Court means?

The Court: No. You prefaced this line of questioning or these questions on this particular point with the statement that the longshoremen worked on the plaintiff's property. Now, the answer that he gave seemed to be—the answer he gave in reference to loading their products aboard steamers and other vessels than this particular vessel that was chartered—except that in the one case the longshoremen took charge of the loading as well as the unloading, and in the other that——

Mr. Banfield: I don't think the Court is straight on that. The testimony has been—for instance, a commercial carrier—the mill hands brought it up to the bull rail, and there the product was delivered. The transfer of possession was delivered to the common carrier. The common carrier hired men to take it and attach the slings, put it aboard the vessel and put it in the hold; that the Juneau Spruce was done with it when it was put at

(Testimony of Eugene S. Hawkins.)

the last place it was to be on their property. The carrier was employing the tackle and the men to hoist it aboard. Now, when a shipment went south, the same procedure was handled. When a shipment went to their logging camp, their own material was going to their own camp on their own boat. The mill hands brought it to the dock, operated the [75] crane and set it on the company's boats and barges, stowed it aboard, and it went to the logging camp. The property was owned all the way through by the lumber company. The lift trucks and slings, all the equipment was the company's, and it was done by their employees. But when a customer came with their equipment, the company brought it to the face of the dock. The company crane and company employees dropped it aboard the vessel, and there, he says, the ownership of the boxes changed hands because it was delivered on the property of somebody else, and at that point longshoremen were hired to handle it. Now, he testified in this one particular instance, when a shipment was going to Pelican, the mill employees brought it to the face of the dock, operated the crane and set it down on their own boat. It varies from the usual practice because the boat was under charter to Mr. Engstrom, the Whiz Fish Company, and that work ordinarily was done by longshoremen, and longshoremen were hired. I think that is a summary.

The Court: It could be said the method varied when the floating equipment was plaintiff's own and when it wasn't.

(Testimony of Eugene S. Hawkins.)

Mr. Banfield: That is right; and when the tackle used, if it was ship's tackle, there was a difference in employment than when the company's crane was used. If the Court please, Mr. Strayer calls my attention to a slight mistake I made. When the property is being delivered for the use of the company crane, the mill employees always use the crane to [76] operate it and set the equipment aboard the floating equipment. If the floating equipment is company equipment, then it is stowed aboard by company employees, regular employees. If it is stowed aboard somebody else's vessel, like delivery to a commercial fish company, longshoremen were employed and they stowed it. And it is just a case of whose property it is that determines what kind of employees are used.

Q. Is that a correct statement, Mr. Hawkins?

A. Yes.

Q. Mr. Hawkins, was there ever any time when someone else hired longshoremen to come aboard your equipment? A. Yes.

Q. What was that?

A. We were expanding our logging facilities and had shipped up on a commercial carrier a tractor and a big donkey and big spools of cable and other big equipment, and at the request of the agent of the steamship company we placed our barge alongside the ship so this equipment could be unloaded onto our barge rather than the dock, in as much as the trucks were not of sufficient strength

(Testimony of Eugene S. Hawkins.)

to move the equipment about when they would get it off, so they employed longshoremen to take the slings off the equipment after it was unloaded on our barge. When this operation was completed, our tug moved the barge to our dock, and our yard employees lashed it down and made it fast for [77] shipment to our logging camp.

Q. According to that, that is a case when longshoremen worked aboard your equipment?

A. That is right.

Mr. Andersen: I object. There is no necessity for counsel to make a summation of evidence.

The Court: It is not improper to embody what has already been said for the purpose of clarity.

Q. Was there any time other than the delivery to these small boats when you might pay some longshoremen for some particular service?

A. Yes.

Q. What was that?

A. That would be some instances when we had a shipment of lumber and the boat was, we will say, at the Alaska Steamship Dock and had discharged its cargo there, and rather than transport our lumber to that dock for loading we would ask the steamship company to move their vessel to our dock for loading of this lumber. Then we would pay the tie-up charges of the longshoremen to tie-up to our dock.

Q. When they were tying up to the dock, whose hawsers or tie-up would they be using?

(Testimony of Eugene S. Hawkins.)

A. The steamship company's.

Q. And they would come aboard your dock for what purpose? [78]

A. To attach these hawsers to the piling and tie-up facilities there.

Q. Was there any agreement between yourself and the steamship company as to who would pay for that extra service of moving the vessel?

A. Yes.

Q. Who? A. We were to pay for that.

Q. You were to pay the longshoremen for that?

A. Yes.

Q. Do you know how many longshoremen were hired to tie-up a vessel? A. I think two.

Q. Do you know how much was charged?

A. I believe it is two hours, or either one hour or two hours. I am not quite positive.

Q. In other words, a somewhat incidental charge for moving the vessel? A. Yes.

Q. Is that all the work that longshoremen ever did that appeared on your payrolls and your checks? A. Yes.

Q. And summarizing, is it correct to state that would simply consist of the work of delivering fish boxes and incidental lumber and materials to small boats at your dock—that [79] is, vessels owned by somebody else—and these tie-up charges?

A. Yes.

Q. Now, going back to your conversation with Mr. Albright on or about August 1st, how did the

(Testimony of Eugene S. Hawkins.)

conversation end—that is, what was the agreement between the parties; what did you say to each other?

A. Mr. Albright stated that he would contact the mill—I.W.A. officials—and see if he couldn't get them to agree to work it out so we could sign a contract also with the longshoremen and the I.W.A.

Q. Did you say anything, what you would do if he were successful? A. Yes.

Q. What did you say?

A. That, were the agreement such, we could do nothing else but that. It would be agreeable.

Q. If it was agreeable with the I.W.A.?

A. Yes.

Q. After this conversation with Mr. Albright, did he ever come back to see you again?

A. No, he never did.

Q. Did the longshoremen's committe of the Local ever come back to see you again? A. Yes.

Q. When? A. October 23rd.

Q. How do you happen to remember that particular day?

A. That was the day Mr. Card and I both arrived back from the States. I was down on a business trip and I requested Mr. Card to come back with me to assist in the signing of the I.W.A. contract that we were working on all summer and had finally gotten to a satisfactory agreement to all parties worked up.

(Testimony of Eugene S. Hawkins.)

Q. On October 23rd who was present at the conference?

A. Mr. Card and myself and Mr. Wheat and Mr. McCammon, I believe.

Q. And what—who did they say they represented—that is, Mr. Wheat and Mr. McCammon?

A. They represented a committee from the I.L.W.U., Local 16.

Q. What did they say they were there for?

A. To negotiate a contract for the work from the bull rail out.

Q. Now, at that time what work was being performed on the dock—I might ask you, was the same work you described during the Albright conversation, that was the practice then, was all that work being carried on, all those different types of loading? A. Yes.

Q. How about the Army Engineers? [81]

A. That had discontinued then.

Q. How "discontinued"?

A. That is, in September they canceled the balance of their contract and ceased to accept delivery of any more lumber.

Q. Did that make any difference in the amounts or quantities you would have to sell to others?

A. Yes.

Q. What did you do when that occurred, and prior to October 23rd, to change the pattern of deliveries?

A. Immediately upon being notified of that de-

(Testimony of Eugene S. Hawkins.)

cision we started the instigation of barge transportation to Rupert and Tacoma.

Q. And tell me what you did in order to get ready for that operation?

A. We changed a lot of the mill around for lumber segregation and chartered and leased barges and purchased a new tugboat.

Q. Anything with respect to storage area?

A. Yes. We filled in additional storage area there that was, prior to that was useless; bought some more property, tore buildings off of it, moved buildings; and made available every foot of storage area we could in order to accumulate these customers' orders in lots preparatory to barge shipment.

Q. Were you still making all your deliveries, Mr. Hawkins, [82] by receiving an order and making up specific orders and then shipping it?

A. Yes.

Q. Was that necessary?

A. That was absolutely necessary.

Q. In other words, you couldn't take all the lumber and ship it some place and then get rid of it?

A. That is true. At this time that the Engineers stopped buying, it created a surplus so the only lumber sold and moved was lumber sold on definite order and manufactured to the customer's specification individually.

Q. Did it make any difference in the price to dispose of it that way?

(Testimony of Eugene S. Hawkins.)

A. It was considerably more that way than if we just arbitrarily manufactured lumber and sent it below in the hopes of selling it to some one in that form.

Q. When you got these barges, Mr. Hawkins, how big were they?

A. One was 110 feet long, and one was longer, and one was a B.C.L. type—two was.

Q. What is a B.C.L. type?

A. That is a shipshape barge instead of being square. It is like a ship but has no superstructure on it.

Q. How much lumber will it hold?

A. Upwards to a million and a quarter feet.

Q. How much lumber did you produce a day down there?

A. In excess of 200,000 a day.

Q. And now, Mr. Hawkins, had you started this barge loading operation at the time Mr. McCammon and Mr. Wheat came to see you on October 23rd?

A. We had just completed loading a barge.

Q. I would like to have you tell the jury how you went about loading one of these barges, with particular emphasis to the time it would take and the arrangement of the work and so forth.

A. Well, the first barge was a small one in the first place, and the orders we had to fill—we took out all the lumber which was stored from our main mill, in the storage area, put it through the re-

(Testimony of Eugene S. Hawkins.)

manufacturing plant and manufactured it to the customer's specification, and put it near our crane on the face of the dock. Now, some days we would accumulate a lot, and some days it would be three or four lots.

Q. What is a lot?

A. A lot is one carload of lumber, approximately 25,000 feet and that just fills one boxcar.

Q. Thank you. Go ahead.

A. And there was an order given this lot and a paint daub assigned to it and, when it was manufactured, when it got to 25,000 feet and was finished, the yard employees would load [84] this lot aboard the barge and until the barge was loaded.

Q. Would this loading operation be a continuous proposition? A. No.

Q. What would the men be doing the rest of the time?

A. They would be taking it to the manufacturing plant, and it would be taken from the plant to the face of the dock, strapping it, marking it and painting a daub on it, and tallying and stacking for a lot accumulation, and just that type of work.

Q. Now, how long would it take to accumulate enough lots to fill a barge?

A. Well, I believe on that particular barge it was better than a week to accumulate enough for it.

Q. If this barge was used for a week, it would necessarily constitute a storage area, would it not?

(Testimony of Eugene S. Hawkins.)

A. Yes.

Q. Was that one of the objects of using barges?

A. That was a factor in our original plans in that the area adjacent to the mill was very limited and by so using a barge we would be able to increase our storage area materially and segregation area.

Q. Was there any other reason for using a barge?

A. It was a far cheaper operation than the commercial steamship.

Q. Did you continue to ship any by commercial steamship? [85]

A. Yes. We shipped rush orders and high-priced orders that would give us enough margin to work on to ship by commercial steamship.

Q. Had your idea of the barges and cheaper operation have any significance in your future plans?

A. Yes. It was apparent that very shortly the market would be much lower because of the lack of the Engineers buying the lumber and the economic situation all over the world, as a matter of fact, for exporting which would bring the price of lumber down, and we would then have already instigated and have in motion a cheaper facilities for the movement of our lumber, the barges and tugboats and things set up to operate when this would come about.

Q. Have subsequent events proved that correct?

(Testimony of Eugene S. Hawkins.)

A. Perfectly correct.

Mr. Andersen: I object to that.

The Court: It is immaterial.

Q. Now, Mr. Hawkins, going back to your conversation now with Mr. Wheat and Mr. McCammon and Mr. Card, what was said at that meeting by the parties? This, incidentally, was October 23rd, the meeting of October 23, 1947.

A. In the first place I had requested Mr. Card to assist me in the labor management negotiations here and I requested that he be the principal speaker and take care of this meeting that we had on and why we were sitting there, and [86] what little I added along with it, I can relate.

Q. All right. Relate what the longshoremen said they wanted.

A. The longshoremen said they wanted again all the work from the bull rail out plus the barge loading. We had just completed loading then, and we had used our employees at it, and they requested that work.

Q. Did they say anything about an agreement?

A. And they wanted this agreement signed up for this purpose to include all that.

Q. Did they say who would be parties to that agreement?

A. Yes. The I.L.W.U. 1-16 and the Juneau Spruce Corporation.

Q. What was said by the Company representatives?

(Testimony of Eugene S. Hawkins.)

A. That we had recognized the I.W.A. as the exclusive bargaining agent; they had shown us their signatures and verified the fact they were representative of a majority of the employees; and that we had during the summer months negotiated a contract agreeable between both parties and were in the process of signing it then; and, in view of that, we couldn't bargain with their union.

Q. Now, was that the sum and substance of that part of the subject? A. Yes.

Q. Was there anything else said at the end of the conversation regarding any particular job on the dock or any particular work that had been done? [87] A. No.

Q. Do you remember, Mr. Hawkins, something about carrier blocks?

A. Oh, yes. That was the outset of—I should say, the tail end of what had transpired during my absence.

Q. Just say what was said then.

A. What was said then was that they wanted us to employ two longshoremen and a boss to remove the carrier blocks after our lumber had been taken off these blocks and put on the commercial steamship.

Q. Mr. Hawkins, tell us this—what is a carrier block; and what is a carrier, first?

A. A carrier is a piece of equipment that straddles a package of lumber, raises and transports it from one place to the other.

(Testimony of Eugene S. Hawkins.)

Q. Those big yellow machines we see running around here? A. Yes.

Q. What are the blocks?

A. The blocks are a specially built piece of wood that the lumber sits on and makes the carrier able to hook on and thereby raise this package of lumber and keeps the edges clear from the ground so it don't get hooks in them.

Q. Were these carrier blocks used when you delivered to commercial steamers at your dock?

A. Yes. [88]

Q. Tell me what happened to the blocks in the process of delivering it to the bull rail.

A. It would be underneath the package of lumber until it got to the bull rail and, when the lumber was lifted off, it would be left sitting on the dock.

Q. The lumber carrier and lumber and blocks would go to the bull rail, and the carrier would just drop it and go away? A. Yes.

Q. And the longshoremen would hoist it aboard the steamer? A. Yes.

Q. Did you or the Juneau Spruce Corporation hire the longshoremen to attach the sling and hoist it aboard the steamer? A. No.

Q. That would leave the carrier block sitting there; is that true? A. Yes.

Q. What was it they were referring to when they spoke about these carrier blocks, what work in connection with it?

A. In order to make room for the carrier to deliver another load there, these carrier blocks had

(Testimony of Eugene S. Hawkins.)

to be removed from that particular spot and stacked up and, when there got to be a lot, the carrier would take them back to the mill yard for other lots.

Q. How much do carrier blocks weigh? [89]

A. Maybe 15 pounds.

Q. 15 pounds? A. Yes.

Q. What work did they want with respect to those blocks?

A. They wanted the job of stacking them up preparatory to making a package of them for the carrier.

Q. Were these slingmen hired by the steamship company there? A. Yes.

Q. And they wanted two more men to lift the blocks aside? A. Yes.

Q. What had been done prior to that time regarding carrier block men?

A. When it was lifted off, there was nothing to do but stand and wait so they picked them up themselves and throwed them over in a pile.

Q. They wanted two men to lift a 15-pound block and put them in a pile? A. Yes.

Q. What was said at the meeting regarding carrier block men?

A. They had sent down some men to do this work on their own accord and at this meeting they wanted to know if we were going to pay them for it. We said, in as much as we never ordered the men to come down and never requested it and they

(Testimony of Eugene S. Hawkins.)

sent men down to do work we had not assigned, that we would not pay the men for it. [90]

Q. Was that the end of the conference?

A. Yes.

Q. Did they make any remark after you had informed them of it?

A. That they would see about who would pay what.

Q. That they would see about who paid for what? A. Yes.

Q. Was there any other conference with any other labor union that day? Just a minute—going back—I will withdraw that last question—to the conference of the 23rd; was there any discussion or any statements made by either side as to whether or not there were any longshoremen employed there then? A. No. There was—

Mr. Andersen: I submit that answered the question. The question was asked and answered, may it please the Court. He said, "No."

The Court: Yes,

Q. Calling your attention particularly to Mr. Card, did he question anybody there as to longshoremen, whether they were being employed by the company or not? A. Yes.

Q. He was new here, was he not? A. Yes.

Q. Who did he ask, and what did he ask? [91]

A. He asked the representatives of 1-16 if they represented any of our employees, and they said, "No."

(Testimony of Eugene S. Hawkins.)

Q. That is all. Now, did you have any other meeting with any other union committee?

A. Because of that situation being brought up, we requested a meeting with the shop committee of the I.W.A. immediately after closing time that night.

The Court: Before we go into that, I think it is time to adjourn. This seems to be a good place. Ladies and gentlemen of the jury, you are again admonished not to talk about this case with anybody, nor among yourselves, nor to permit anybody to talk to you about it and, if anyone should attempt to talk to you about the case, you should immediately warn him you are on the jury and, if he persists, you should report the matter immediately to the Court. You are also not to arrive at any opinion or express any opinion until the case is finally submitted to you for your deliberation. I also deem it necessary that you refrain from reading newspapers regarding this case or any related case. Your decision or verdict in this case will have to be arrived at from the evidence that is produced here before you and the law as given to you by the Court, and you should refrain from reading anything that might influence you in any manner.

(Whereupon, the case was adjourned until 10:00 o'clock a.m., May 2, 1949, reconvening as per adjournment, with all [92] parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:)

(Testimony of Eugene S. Hawkins.)

Mr. Strayer: If the Court please, may I ask counsel for defendants if they have the records we discussed yesterday?

Mr. Andersen: No.

(Whereupon, the witness Eugene S. Hawkins resumed the witness stand and the Direct Examination by Mr. Banfield was continued as follows:)

Q. Mr. Hawkins, last Friday you finished your testifying, stating there had been a meeting on October 23, 1947, with the committee from the longshoremen's Local 16. Now, on that same date did you have a conference with any other union committee? A. Yes.

Q. Tell me who was present at that conference.

A. For the I.W.A. Tim O'Day and Glen Kirkham.

Q. Were there any other representatives for plaintiff? A. And Gene Card.

Q. Who is Gene Card?

A. A Personnel Manager of the Coos Bay Lumber Company and Labor Management Adviser to the Juneau Spruce Corporation.

Q. Will you tell us what was said at that meeting? A. That meeting was held——

Mr. Andersen: May it be noted that the same objection [93] is made as hertofore, immaterial and hearsay and incompetent so far as the defendants are concerned?

(Testimony of Eugene S. Hawkins.)

The Court: The record may so show, and the same ruling.

A. In the afternoon; that was in the evening, of the same day, we had the meeting with the longshoremen at which the question of barge loading was brought up. And Mr. Card and myself had requested this meeting with the I.W.A. for the purpose of asking them if they included barge loading in their work, and we were advised that they did but that to be sure of everything they would send a wire to their International and request their authority on it.

Q. At that time was there a barge being loaded?

A. We had just completed loading the first barge.

Q. And at that time were there any negotiations regarding a contract with the I.W.A.?

A. As a matter of fact at that time we had completed the agreement on this contract.

Mr. Andersen: I move that be stricken as an opinion of the witness.

The Court: Objection overruled.

Q. Mr. Hawkins, are you now speaking about Plaintiff's Exhibit No. 2 as the agreement which you completed?

A. Yes; this is the one which we completed.

Q. What is the date of that agreement? [94]

A. November 3, 1947.

Q. Were the terms of this agreement agreed to at the meeting of October 23rd, or was it agreed to with certain exceptions; tell us to what extent——

(Testimony of Eugene S. Hawkins.)

Mr. Andersen: May the same objection run to this line of questioning, without objecting to each question?

The Court: Yes. It should be shown whether Plaintiff's Exhibit 2 embodies the entire agreement arrived at from earlier meetings.

Mr. Banfield: I will withdraw the previous question.

Q. Does the Plaintiff's Exhibit 2 embody the terms of the agreement arrived at October 23rd, or were there some exceptions or differences?

A. The agreement had been agreed upon prior to October 23rd.

Q. Completely in all its phases?

A. Yes; the only exception being that the I.W.A. though desired to send the agreed-upon agreement to their International for ratification and return for signing, and which was done. It was brought back on the 3rd of November. Had it not been for that, it would have been signed earlier.

Q. In this Agreement of November 3rd it is stated that: "The Union is hereby recognized as the sole and exclusive collective bargaining agent for all the employees of the Employer in its sawmill, manufacturing and retail departments at Juneau, Alaska, excluding superintendents, foremen [95] and office employees, on all matters pertaining to wages, hours of labor and other conditions of employment in the aforesaid plant, subject to the provisions of Article II as provided in this

(Testimony of Eugene S. Hawkins.)

Agreement." Article II is that dealings would be through a Plant Committee, the Shop Committee. Was that particular provision of that contract discussed at the meeting of October 23rd?

A. Yes.

Q. What was said regarding it?

A. Since it was agreeable with all concerned that the I.W.A. include barge loading in their scope of the processing of lumber, it was thought it should be included—barge loading—in that paragraph; and if that being the case, we felt we would also have to include machine-shop and powerhouse employees and departments—we were expanding still at that time—and we would have to leave provisions for new departments and exclude departments we ceased to use, and it would be a quite lengthy matter. Rather than go through this process, we thought to use the language in there of all employees, then it would include everyone employed by the Juneau Spruce Corporation.

Q. You mean everyone employed, or were there any exceptions, being any exceptions to those employed—I believe you testified before regarding people away from Juneau?

A. That would be the exception—of our boats and logging camp. [96]

Q. In other words, you mean to imply it would be the entire personnel of Juneau? A. Yes.

Q. Now, after this meeting did the I.W.A. present the contract for any purpose?

(Testimony of Eugene S. Hawkins.)

A. For signing only.

Q. And when was that?

A. On November 3rd. I wasn't present at the signing.

Q. Did you leave authority for someone to sign on your behalf? A. Yes.

Q. And was it actually signed on behalf of the Juneau Spruce Corporation? A. Yes.

Q. By whom? A. Gene Card.

Q. Was there any subsequent barge loading in 1947? A. Yes.

Q. What did that consist of?

A. We loaded a barge out in—I think probably several barges. I just don't remember how many it was; consisting mainly of cleare and shops.

Q. What do you mean by "clears"?

A. That is the better grade of lumber, the higher priced lumber. [97]

Q. Why do you call it "clears"?

A. It is lumber free of knots or materially so.

Q. What do you refer to as "shops"?

A. Shop type lumber is used in manufacturing of furniture and doors and windows. It has knots in it but so spaced as to leave clear cutting between the knots.

Q. Is that poor quality or good quality?

A. The second most expensive type of lumber.

Q. Who loaded these barges that went out with this type of lumber in 1947?

A. Our mill employees.

(Testimony of Eugene S. Hawkins.)

Q. Did they move it up to the face of the dock?

A. Yes.

Q. Who operated the crane?

A. Our yard employees.

Q. And who stowed it aboard the barges?

A. Our yard employees.

Q. Were there any members of Local 16 employed or who worked at the Juneau Spruce Corporation on the plant or property after this meeting of October 23rd? A. No.

Q. Does that hold good as long as you were there as Manager? A. Yes.

Q. Was there ever any further discussion that year with the I.W.A. as to their doing this work?

A. No.

Q. Now, in 1948—first—I will withdraw that. First, was there any other meeting with the I.L.W.U., Local 16, or any representatives on their behalf during 1947? A. No.

Q. When was the next meeting.

A. In April of 1948.

Q. In April? A. Yes.

Q. How long would that be before the strike or the picket line?

Mr. Andersen: I object. I move to strike the word "strike."

Mr. Banfield: I will withdraw the question.

Q. How long before the picket line was established did you have a meeting with the I.L.W.U.?

A. One day.

Q. Mr. Hawkins, I would like to ask you if

(Testimony of Eugene S. Hawkins.)

there wasn't some other meeting between October 23rd and the date the picket line was established?

A. Yes. It was a little earlier than that.

Q. What month would you say?

A. The latter part of the month prior.

Q. In March? A. Yes. [99]

Q. Who was present at that meeting?

A. Mr. McCammon; Mr. Ellis.

Q. Who was Mr. McCammon now?

A. Of the I.L.W.U., Local 1-16.

Q. Who was Mr. Ellis?

A. State Steamship Company.

Q. Was Mr. Ellis here—for what purpose was he at this meeting?

A. I had requested that he come up to assist us with the barge operation, and loading and unloading techniques, and so on.

Q. Did you ask him to be present at this meeting? A. Yes.

Q. Was there anyone else present besides Mr. Ellis and Mr. McCammon and yourself?

A. Mr. Stamm; and two other longshoremen—Mr. Wheat, I believe; I don't recall the third one right now.

Q. Do you remember Mr. McCammon at this particular meeting definitely?

A. We had quite a few meetings right in a short time there. I believe he was there, but I wouldn't be positive. There were three representatives of Local 1-16 there.

(Testimony of Eugene S. Hawkins.)

Q. Did they say they represented Local 1-16?

A. Yes.

Q. What occurred at this meeting with Mr. Ellis? [100]

A. They asked if we were of the same opinion regarding barge loading as we had stated previously, and I replied, yes, we were.

Q. Was there any discussion at that time regarding signing a contract?

A. No; that wasn't mentioned.

Q. Now, when they said "previous" meeting, what did they mean? What did you take that to mean?

Mr. Andersen: That calls for a conclusion of the witness, may it please the Court, unless there was some discussion about it.

The Court: Yes. You can ask him when the previous meeting was.

Q. What previous meeting was referred to?

A. Whereby they asked for the signing of a contract, both coastwise and local, for the work of handling our products from the bull rail out.

Q. What was your repy to this proposal—request?

A. That we had recognized the I.L.W.A. as exclusive bargaining agent, and thereby couldn't bargain with any other union for that work.

Q. I think in your statement there you said you told them you had made an agreement with the I.L.W.A.; what do you mean?

(Testimony of Eugene S. Hawkins.)

A. I.W.A. I got the wrong letter in there.

Q. You mean Local M-271? [101]

A. Yes.

Q. In other words, it constituted a refusal on the part of this Local to give them the work?

A. Yes.

Q. Was anything further said at that meeting, or was that the end of it?

A. As they went out the door they remarked, "We will see whether or not" we would talk with them about it in the future.

Q. Between this meeting on October 23rd and the meeting in late March had the mill operated all the time? A. No.

Q. Tell us why not and for what period.

A. It was down from about the 21st or 22nd of December until about the 1st of March for repairs and because of the snow and etc.

Q. By being "down" you mean the mill was closed and no lumber was being produced?

A. Yes.

Q. Did it operate continuously after the 1st of March?

A. No. We started up and there come another big snow. We shut down for another two weeks and then reopened.

Q. At the time they asked for this meeting or came to see you in March, was the mill operating?

A. No, I don't believe it was. [102]

Q. Were you loading a barge at that time?

A. Yes.

(Testimony of Eugene S. Hawkins.)

Q. Now, tell me when was the next meeting after this one in March?

Mr. Andersen: With whom?

Q. With anyone; any union?

A. It would be very shortly before the picket line was put on, one or two days; I don't recall.

Q. What was the date the picket line was put up? A. The 10th day of April.

Q. Who was present at this meeting one or two days before April 10th?

A. Mr. Banfield, Mr. Stamm, and I.L.W.U. representatives.

Mr. Andersen: I am going to object to that.

A. Mr. McCammon, I am sure, was one.

Mr. Andersen: I object to the conclusion of the witness as to the I.L.W.U. unless they designated——

Mr. Banfield: We will show that.

Mr. Andersen: It may be stricken then, I assume?

The Court: I think he can state it now. You can cross-examine him on it. Objection is overruled.

Q. Do you remember the names of the I.L.W.U. representatives?

Mr. Andersen: I assume you mean I.L.W.U., Local 16, representatives?

Q. Yes. Local 16 representatives? [103]

A. Mr. Wheat and Mr. McCammon.

Q. Let me ask you, Mr. Hawkins, did Mr. Wheat

(Testimony of Eugene S. Hawkins.)

continue in these final negotiations, do you know?

A. No, I don't know. As I have stated previously, we had quite a bit of confusion at the time, and I am not very good at remembering names, and I wouldn't want to be positive at all times of the names.

Q. Mr. Joe Guy was present at any of these meetings?

A. Yes, he did. That is the one I couldn't think of a while ago.

The Court: Which? He said, "a moment ago."

Mr. Banfield: I said either of these meetings.

Q. You said you were referring to a "while ago"; what meeting was it Mr. Guy attended?

A. He attended the last two meetings.

Q. The last two. Do you know Mr. Pearson?

A. Yes.

Q. Did he attend any meetings?

A. Yes, he did.

Q. What did he attend?

A. He was at the last two meetings also.

The Court: That is instead of who now?

Q. Are you sure Mr. Wheat was at the last two meetings? A. No, I am not.

Q. Could he have been there? [104]

Mr. Andersen: I object, may it please the Court.

Q. Or are you certain?

Mr. Andersen: Did the Court rule on my objection?

The Court: Objection overruled.

(Testimony of Eugene S. Hawkins.)

A. Now that the names are brought up again, I know there were only three, and I do know Mr. Guy was there and Mr. Pearson.

Q. Are you sure about who the other one was?

A. I would know his name again. I said it a minute ago and forgot it again.

The Court: Do you mean McCammon?

A. McCammon; yes.

Q. Were those persons present at both the last two meetings? A. Yes.

Q. Who are those three men?

A. They said they were the Shop Committee and officers of the I.L.W.U. 1-16.

The Court: This Union has been referred to as 1-16 repeatedly. I understand it is 16.

Mr. Andersen: It is interchangeable, I think.

Mr. Banfield: It was explained that it was District 1 of the I.L.W.U.; and at one time there were other districts, but for several years that has been the only district in the I.L.W.U. They dropped the one: It is just Local 16. Local 42 was so affiliated that it had different districts; and it [105] was prefaced by "1." It is interchangeable.

The Court: It still wouldn't be the number, would it—referring to the district?

Mr. Andersen: We will stipulate—1-16 or 16—it means this Union in Juneau, your Honor. Isn't that correct, Mr. Banfield?

The Court: Very well.

Mr. Banfield: Correct.

(Testimony of Eugene S. Hawkins.)

Q: Now, Mr. Hawkins, what took place at this meeting just before April 10th?

A. The longshoremen and I.W.A. officers at that time came in to stipulate that they were placing a picket line at our plant and that the I.W.A. employees would not go through the line.

Q. You said two groups came in to stipulate. What do you mean? Who was putting the picket line on? One or both?

A. The longshoremen were putting the picket line there.

Q. What did the I.W.A. tell you at this meeting?

A. That they, being a union, would have to recognize the picket line.

Q. Did they give you any reasons why they would have to recognize it?

A. Yes. They said that for peace sake, etc., they had agreed to give that work to the longshoremen at that time.

Q. Was the mill operating at that time? [106]

A. Yes.

Q. Did the I.W.A. tell you how they had arrived at this decision or what action had been taken to make this decision?

Mr. Andersen: Could I interrupt? A better foundation should be laid so far as persons present, are concerned. Was it the meeting at which Mr. Banfield was present, and Mr. McCammon was present, Joe Guy was present, and Mr. Pearson was present? There was no reference to any representative of the I.W.A. I assume it is the same meeting.

(Testimony of Eugene S. Hawkins.)

The Court: The reference was to a committee of the I.W.A. No names were specified. You wish the names?

Mr. Andersen: Yes, your Honor.

Q. Who was present there representing the I.W.A.?

A. Mr. Peterson was spokesman for the representatives.

Q. Do you know whether or not he was an officer of the I.W.A.?

A. He was Secretary, I believe he said.

Q. Do you know who the other I.W.A. men were?

A. There was one fellow—oh, I forgot his name; another was Big Tim O'Day.

Q. Did they tell you how this decision was arrived at? A. Yes.

Mr. Andersen: The same objection as to hearsay, may it please the Court, particularly so far as the International is concerned.

The Court: Is it very material how they arrived at [107] it? After all it seems to me the important thing is that it was arrived at, and not the process by which it was arrived at.

Mr. Banfield: I think the Court is right.

Q. Did they state at this meeting anything they would do after this meeting other than recognize this picket line? A. No; I don't recall.

Q. What happened on April the 10th?

A. The longshoremen placed a picket line at the entrances of our plant.

(Testimony of Eugene S. Hawkins.)

Q. How many pickets were there?

A. Four.

Q. Where were they placed?

A. One at the main entrance and one at another entrance in the vicinity of our power plant and machine shop; two in each place.

Q. Did they carry any signs? A. Yes.

Q. Was there anything on the signs?

A. Yes.

Q. What was on it?

A. At the top was, "I.L.W.U., Local 16, locked out by Juneau Spruce Corporation."

Q. And how long did the pickets remain at both places? A. Just a few days. [108]

Q. And after that were there still pickets there?

A. At the main entrance; yes.

Q. How long did they stay at the main entrance of the plant? A. They are still there.

Q. Were they there all the time that you were manager of the plant? A. Yes.

Q. How many hours a day did they picket?

A. Twenty-four.

Q. Now, at the time that this picket line was established, what was your intention with respect to operating the mill—that is, the extent of the operation that you intended to carry on?

A. Up to that time, since the inception of the company, we had been gradually getting our equipment and lines of supply in shape to efficiently saw and handle 50,000,000 feet for the year of 1948.

(Testimony of Eugene S. Hawkins.)

Q. Would that be 50,000,000 feet of logs or 50,000,000 feet of lumber?

A. That would be 50,000,000 feet of lumber.

Q. Mr. Hawkins, what preparations had you made within the mill itself?

A. We had to lengthen the green chain to facilitate sorting. We acquired more storage space, and things too numerous to mention. [109]

Q. What had you done regarding the log supply?

A. We had—by that time we had completed our logging camp installation. All the equipment was there. The logging road was built. And our own operation was put out 25,000,000 that year. Our government contract specified a minimum of 20,000,000 feet. And we had assisted financially at other points numerous gyppo-loggers—or contract loggers, maybe should be the term—to produce for us, whose aggregate amount would have been considerably more than 25,000,000.

Q. In other words, you mean you would have a supply of 50,000,000 feet for 1948? A. Yes.

Mr. Andersen: I object to that. That is the best potential, according to the witness. I think it is leading and suggestive on the part of counsel. I move it be stricken.

The Court: I think it embodies what has already been testified to. Objection overruled.

Q. Mr. Hawkins, how would the grade of this lumber in 1948 run as compared to the grade in 1947?

(Testimony of Eugene S. Hawkins.)

A. We had just moved into on Kosciusko Island in the Edna Bay vicinity in the best, biggest and best block of timber in Southeastern Alaska.

Q. Who were you buying that timber from?

A. From the Forest Service. [110]

Q. How much were you required to purchase from the Forest Service per year?

A. A minimum of 20,000,000 feet.

Q. How would the quantity of the lumber run in that area as compared with what you sawed on the average in 1947?

A. The amount of uppers, which is shops and clears, would have tripled the previous year from the other areas.

Q. Did you actually cut any timber at Edna Bay? A. Yes.

Q. And how much did you cut?

A. 10,000,000 feet.

Q. By what date did you have 10,000,000 feet at Edna Bay?

A. We had that much cut by, well, about March 15th.

Q. And tell me, was there a union organized at Edna Bay? A. No.

Q. Was there one organized elsewhere that had jurisdiction at Edna Bay? A. No.

Q. Were the loggers at Edna Bay members of any union? A. No.

Q. Mr. Hawkins, was there a time when there was a strike at Edna Bay? A. Yes.

(Testimony of Eugene S. Hawkins.)

Mr. Andersen: I object to this. I can't see the relevancy of it at all. [111]

The Court: True; but I asume it is preliminary.

Mr. Banfield: It is, if the Court please.

Q. When was that strike there?

A. Just a few days prior to April 10th.

Q. Prior to the picket line here? A. Yes.

Q. And was that strike settled? A. Yes.

Q. How soon?

A. I would say a few days after the 10th; possibly the 15th or 20th.

Q. Did the men during the period of this negotiation take any action through any union?

Mr. Andersen: Unless relevancy is stated, I am going to object that there is no relevancy and for the further reason that this is obviously hearsay. No foundation has been laid at all, save and except for hearsay. So far as the witness is concerned, he already stated that during this time he was in Juneau. Now, I don't know how far Edna Bay, Alaska, is. But distances in Alaska are usually quite long; at least that is my experience since I have been here. I move it be stricken as hearsay.

The Court: What is the purpose?

Mr. Banfield: If the Court please, I can show and will show by laying a foundation what Mr. Hawkins did as far [112] as the Juneau Spruce Corporation is concerned.

The Court: Repeat the question.

Court Reporter: "Did the men during the pe-

(Testimony of Eugene S. Hawkins.)

riod of this negotiation take any action through any union?"

Mr. Andersen: Obviously it is calling for the conclusion and opinion of the witness.

The Court: That may be, if it is just a guess. He may have personal knowledge. On your promise that it is relevant or that you will connect it up with something relevant——

Mr. Banfield: I will withdraw the question regarding the strike.

The Court: You already asked him. He testified there was one and it was settled.

Q. Mr. Hawkins, were you in charge of the Edna Bay operation? A. Yes.

Q. And have you personal knowledge of what you testify regarding the labor conditions at Edna Bay? A. Yes.

Q. Did you negotiate the settlement of this strike? A. Yes.

Q. How was it settled?

A. The employees of the camp presented us with their signatures representing more than 50% of the employees as belonging to the I. W. A. Union and designated them as the bargaining agent for them.

Q. Now, which I. W. A.?

A. It was the Ketchikan local.

Q. And then was there an agreement made?

A. Yes.

Q. And with whom?

A. With the I.W.A. Local, Ketchikan local.

(Testimony of Eugene S. Hawkins.)

Q. Did you have a steady labor supply at Edna Bay? A. Yes.

Q. And was the camp all set up ready to operate? A. Yes.

Q. Would you have any difficulty getting 50,000,000 feet of logs, any difficulty getting fifty——

Mr. Andersen: I am going to object to that as a conclusion and opinion of the witness.

The Court: If you know, you can state.

A. Under the least favorable conditions——

Mr. Andersen: I move that be stricken. It is not responsive to the question, may it please the Court.

The Court: Just state what your ability would be with conditions as they were, not under the least favorable conditions.

A. We could get considerably more than 50,000,000 feet.

Q. How many logs were on hand here in the harbor?

A. At the time of the strike, on hand and on the way here in tow of our boats, a total of 10,000,000 feet. [114]

The Court: Well, now, it isn't clear, I don't think, whether the capacity of 50,000,000 feet is limited to Edna Bay or to all operations.

Mr. Banfield: If the Court please, I think he quite clearly stated, but I can bring it out more clearly for the Court's benefit.

Q. How much of this 50,000,000 feet did you intend to cut in 1948 from Edna Bay?

(Testimony of Eugene S. Hawkins.)

A. 25,000,000 feet from Edna Bay.

Q. How much could you get from other sources?

A. In excess of 25,000,000.

Q. Had you made contracts or agreements for these logs from other sources? A. Yes.

Mr. Andersen: I am going to object to that. The documents would be the best evidence whether there was an agreement or what they may be.

The Court: Objection overruled.

Mr. Banfield: If counsel would wait——

Q. Were the agreements in writing or verbal?

A. For the most part, not verbal.

Q. If they were not verbal, what did they consist of?

A. A letter. I answered several letters to various loggers stating that we would——

Mr. Andersen: May it please the Court, the letters [115] would be the best evidence of what they stated.

Q. Now, Mr. Hawkins, on April 10th or prior thereto was it operating in 1948?

A. None whatsoever.

Q. How did you learn—I will withdraw that question. During what season of the year can you ordinarily operate the mill at Juneau?

A. We had in the course of changing the mill about made provision whereby we could run as long as possible in regard to snow.

Mr. Andersen: I move that be stricken. It is not responsive. I submit the question itself should be answered.

(Testimony of Eugene S. Hawkins.)

The Court: I assume his answer wasn't completed, but it seemed to me he was going on from there.

Q. During what period then, would you be closed down?

A. From the time the snow got one foot deep until it got back to one foot.

Q. Approximately how many months would that be in the winter?

A. Between two and three.

Q. Now, Mr. Hawkins, I believe you testified you had 10,000,000 feet cut at Edna Bay April 10, 1948. Had any of those logs been cut in the water or towed to Juneau?

A. We had put some in the water.

Q. About how many? A. About 250,000.

Q. Leaving about 9,750,000 at Edna Bay on the ground. A. Yes.

Q. Was that in addition to the 10,000,000 feet either being towed to Juneau or already in Juneau in the harbor? A. Yes.

Q. Have any of those logs you had on hand April 10, 1948, at Edna Bay been moved from there since?

A. No.

Q. Have any of the logs in the harbor April 10th or being towed here been sawed or disposed of in any manner? A. Some were sawed.

Q. Where are the remainder?

A. At various log storage areas.

Q. Where?

(Testimony of Eugene S. Hawkins.)

A. Across the Channel and down by Thane.

Q. Did you ever issue any orders to anyone at the mill with respect to further employment of longshoremen? A. Yes.

Q. When were such orders issued?

A. The first few days of October.

Q. And to whom was that order issued?

A. To George Schmidt.

Q. What was his position?

A. Assistant Manager.

Q. And what was the order? [117]

A. I was in Seattle at the time. I sent a wire stating for him——

Mr. Andersen: May it please the Court, I will object to the answer. The wire would be the best evidence of what was conveyed to Mr. Schmidt.

The Court: I don't know that it is the identical words that are intended to be gotten into evidence. It is what was the order.

Q. What was the order in effect?

A. To not hire any more longshoremen regardless of for whose account. I believe that was the gist of it.

Q. Why did you issue this order?

Mr. Andersen: I object. It is incompetent, immaterial and irrelevant, may it please the Court.

The Court: Objection overruled.

A. Mr. Schmidt had wired me—wrote a letter that a committee of the local longshoremen——

Mr. Andersen: I object to this as not the best evidence.

(Testimony of Eugene S. Hawkins.)

Q. Do you have the letter he wrote to you?

A. Yes.

Q. The original letter he wrote to you?

A. A copy of it.

Q. Do you have the original?

A. I believe so. [118]

Q. Where is it, do you know?

A. It would be in the files of the Juneau Spruce Corporation.

Q. And you brought the original back to the office here in Juneau from Seattle and filed it?

A. Yes.

Q. Are you sure that it is in the files of the Corporation; do you know of your own knowledge that it is there? A. No.

Mr. Banfield: If the Court please, I have not been able to find the original, but I do have from the files what appears to be a copy. Will counsel stipulate to the use of the copy?

Mr. Andersen: If you lay a foundation——

Mr. Banfield: We will ask the privilege of calling——

The Court: You can put it in and have it marked for identification.

Mr. Andersen: I also want to object on materiality.

The Court: I doesn't seem material to me, but I assume counsel wouldn't be going into it if it was not material. If you think it is material to your case, have it marked for identification now

(Testimony of Eugene S. Hawkins.)

and examine the witness regarding it and then have it introduced as an exhibit.

Mr. Andersen: Could I have counsel state the materiality?

Mr. Banfield: Yes. For the purpose of showing a [119] further demand was made to Mr. Schmidt that employment be given those longshoremen to load those barges.

The Court: The same already given?

Mr. Banfield: No; not to Mr. Hawkins, but to Mr. Schmidt, and he communicated it to Mr. Hawkins, and Mr. Hawkins——

The Court: It is immaterial what officer of the plaintiff corporation or what demand was made if they merely reiterated the former demand.

Mr. Banfield: True, it is similar to those previously in evidence, but it is another incident, and we want to show what Mr. Hawkins did, while he is here on the witness stand, as a result of Mr. Schmidt's communication to him.

Mr. Strayer: If I may interrupt, the testimony here has shown in the past the practice had been for longshoremen to load some types of vessels—fishing boats and cannery tenders—where longshoremen were engaged to accommodate the owners of those vessels. Mr. Hawkins testified he ordered that there be no more longshoremen for any purpose. I think it is in the order, showing why he gave the order. This explains the order.

Mr. Andersen: I don't believe the why is important.

(Testimony of Eugene S. Hawkins.)

The Court: It is impossible to tell at this stage how material the letter is that resulted in the order. If it is material, you may have it marked for identification.

Clerk of Court: Plaintiff's Exhibit 5 For Identification. [120]

(Whereupon, Court recessed for five minutes, reconvening as per recess with all parties present as heretofore and the jury all present in the box; whereupon, the trial proceeded as follows: the witness Eugene S. Hawkins resumed the witness stand and the Direct Examination by Mr. Banfield was continued as follows:)

Q. Mr. Hawkins, when you gave this order, what was your reason for giving the order?

A. Well, there was one reason——

Mr. Andersen: I object to the reasons as being purely conclusions of the witness, incompetent, irrelevant and immaterial.

Mr. Banfield: What a man has in mind for doing something isn't a conclusion; it is a fact.

The Court: Objection overruled.

A. The one reason was I was going to return in a short time and bring Mr. Card with me, and that they had caused so much trouble and things prior to that, I thought it was best if we just didn't have any more relations in any way.

Q. Did any persons employed by the Juneau Spruce Corporation in March or April, 1948, participate in the picket line?

(Testimony of Eugene S. Hawkins.)

Mr. Andersen: Will you repeat that question, Miss Reporter?

Court Reporter: "Did any persons employed by the Juneau Spruce Corporation in March or April, 1948, participate [121] in the picket line?"

Mr. Andersen: I object on the ground that it calls for a conclusion of the witness. There is nothing showing this gentleman was here during all that time.

The Court: It would be predicated of course on the assumption that he would have personal knowledge, otherwise he couldn't answer, obviously.

Mr. Banfield: If the Court please, the witness testified the picket line was there twenty-four hours a day as long as he was Manager and he testified he was Manager from April 10th until June 1, 1948.

The Court: It seems to me though that your question ought to take in the entire period. Why pick out one period and not the other months?

Mr. Banfield: The picket line wasn't established until April 10th and he left June 1st.

The Court: I thought you said "March or April."

Mr. Banfield: 1948.

Q. Did any persons employed by the Juneau Spruce Corporation during March or April, 1948, participate in this picket line after it was established on April 10th? A. No.

Q. Did any person employed by the Juneau Spruce Corporation after October 23, 1947, partici-

(Testimony of Eugene S. Hawkins.)

pate in this picket line after April 10th? [122]

A. No.

Q. At this meeting of October 23rd, at which, you testified, Mr. Card and the I.L.W.U. committee was present, do you remember what was said at the end of that meeting by the longshoremen's committee as it left?

Mr. Andersen: I submit, may it please the Court, that has already been asked and answered.

The Court: I thought it was asked and answered.

Q. Do you know of anything else in addition to which you have already testified? A. Yes.

Q. What?

A. They stated as they left that they would see to it that our barges never got unloaded at their destination if longshoremen weren't hired to load them here.

Q. Did barge loading require any special skill?

A. No.

Q. Now, Mr. Hawkins, after November 3, 1947, if a man was employed at your mill, how could he bargain with you?

Mr. Andersen: I fail to see the materiality of this, your Honor.

The Court: I assume it is preliminary.

Mr. Banfield: If the Court please, it is. What I am trying to bring out at this time is the relationship between the mill employees and the Company, and all of them, [123] under the terms of

(Testimony of Eugene S. Hawkins.)

this agreement. In other words, what was the actual practice after this agreement went in effect of collective bargaining. One of the contentions of the longshoremen was that they be hired and bargain through the Longshoremen's Union. I want to show what the practice was under this contract.

The Court: You may proceed.

A. They would make an appointment through their foreman or by the office force to talk over their grievances with me, and I would iron it out.

Q. You mean to imply the men deal individually directly with you? A. Yes.

Q. Is there any other way they could take up a grievance or some request?

Mr. Andersen: The question has been asked and answered. He asked the practice.

Mr. Banfield: He testified to a practice. I am asking if there is any other method.

The Court: You may answer.

A. Through the Shop Committee of the I.W.A.

Q. Now, that would be for an individual to bargain with you; he could do it directly or through the I.W.A.; is that correct? A. Yes. [124]

Q. If a group of employees wanted to bargain with you, how could they do it?

A. Through the I.W.A.

Q. Could they collectively bargain with you any other way except through that Union?

A. No.

Q. Did the mill during the time you were Mana-

(Testimony of Eugene S. Hawkins.)

ger maintain a time clock? A. Yes.

Q. Did the longshoremen ever punch the time clock? A. No.

Q. Did the other employees punch a time clock?

A. Yes.

Mr. Banfield: That is the direct examination of the witness. You may cross-examine.

Cross-Examination

By Mr. Roden:

Q. Mr. Hawkins——

Mr. Andersen: Could I interrupt just a moment? At this point, so far as the International is concerned, I want to renew my motion to strike each and all of the testimony of Mr. Hawkins. No foundation was laid, so far as the International is concerned, for the admission of the testimony.

The Court: I don't think you can consider the testimony of each witness alone. He has to show the relation to other testimony.

Mr. Andersen: I knew it would be denied at this time, but I thought it was the appropriate time to renew the motion.

The Court: The motion is denied.

Q. Mr. Hawkins, did I understand you to say you became Manager the 1st of April, 1947?

A. No. I think it was——

Q. When did you become Manager?

A. I think it was the 1st of May.

Q. The 1st of May, 1947? A. Yes.

Q. You at that time were Vice President of the Company? A. Yes.

(Testimony of Eugene S. Hawkins.)

Q. How long did you continue as Manager?

A. Until June 1, 1948.

Q. Are you still an officer of the Juneau Spruce Corporation? A. Yes.

Q. What position do you occupy?

A. Vice President.

Q. And you are the gentleman who negotiated the deal for the Juneau Spruce Corporation to purchase the assets of the Juneau Lumber Mills; is that correct? A. Yes. [126]

Q. When did you first come to Juneau?

A. In July, 1946.

Q. In July, 1946. Did you then start negotiations with Mr. Rutherford? A. Yes.

Q. Mr. Rutherford was practically the sole owner?

Mr. Banfield: If the Court please, this is improper cross-examination. The witness has not testified regarding the negotiations leading up to the sale and purchase at all. He started his testimony at the time of the actual take-over and actual transfer. The negotiations that preceded had nothing to do with this at all.

Mr. Roden: He testified to negotiations between he and Mr. Rutherford. I want to ask how well and how much informed he was about existing conditions.

The Court: You think it is material?

Mr. Roden: Yes.

The Court: Objection overruled.

(Testimony of Eugene S. Hawkins.)

Q. Did you at that time commence negotiations with Mr. Rutherford? A. Yes.

Q. He was practically the sole owner of the Juneau Lumber Mills Company? A. Yes.

Q. And also of the yard at Anchorage? [127]

A. Yes.

Q. And of what is known as the Independent Lumber Company in Fairbanks—he and Roy Ferguson were owners of the Independent Lumber Mill in Fairbanks? A. Yes.

Q. How much time did you spend on the premises when you came up and to the time the negotiations were consummated in the agreement? I believe it is identified here as Exhibit No. 1.

A. I made a survey of the mill two different times, one time when it was running and one time when it was closed, taking about two days each time. The balance of my time was spent in the office of the Juneau Lumber Mills and Mr. Rutherford.

Q. Roughly speaking, how much time did you put in when you came first and the time the agreement was consummated?

A. Probably about a total of two weeks.

Q. And of course you spent most of the time down on the premises of the Juneau Lumber Mills?

A. In the office; yes.

Q. This agreement which is the agreement between the Juneau Lumber Mills and your Company was consummated on the last of April, 1947?

(Testimony of Eugene S. Hawkins.)

A. Yes.

Q. And in this agreement Mr. Banfield called your attention [128] particularly to the last paragraph which says: "It is expressly understood that first party," that is the Juneau Lumber Mills, "is not assigning to second party and second party is not accepting or assuming any collective bargaining or labor agreements which may exist between first party and its employees except with respect to the return transportation fare above noted, and that second party does not assume and shall not be responsible for any claims or demands for wages——." The purpose of that last paragraph was that you would not take over any agreements, which at that time existed or might have existed or may have existed, by the Juneau Lumber Mills for the Juneau Spruce Corporation?

A. Yes.

Q. This was the last day of April, 1947, wasn't it? A. Yes.

Q. And at that time what was known as the Wagner Act was in full force and effect, wasn't it? A. Yes.

Q. You knew that? A. Yes.

Q. And it continued in effect until the 23rd of June, 1947, didn't it? A. Yes.

Q. When the agreement was made, you knew the conditions so [129] far as operating the sawmill was concerned and loading lumber was concerned; isn't that right?

(Testimony of Eugene S. Hawkins.)

A. There was no loading of any lumber that I ever seen by Mr. Rutherford.

Q. But at that time you knew that the sawmill workers were running the sawmill, didn't you—operating the sawmill? A. Yes.

Q. And whenever any lumber was to be shipped you knew that agreements existed for the transportation of the lumber, for the loading of the lumber by the Juneau—by Local 16?

Mr. Strayer: If your Honor please, I would like to make an objection. I don't think the practice in effect by the Juneau Lumber Mills, none except the Corporation, are of any materiality in this case.

The Court: I suppose the purpose is that he knew what the previously existing arrangement was. Is that the purpose?

Mr. Roden: That is the purpose; yes, your Honor.

The Court: Objection overruled.

A. I would say that I didn't know all of them. I didn't know Mr. Rutherford's business that well, but I did see, when I was up here in July, a commercial steamship being loaded and was told that lumber was going to Anchorage and Fairbanks collectively.

Q. After you became Manager, right when the agreement was [130] signed, or right after, a notice was posted, you stated, in which the Juneau Lumber Mills told the employees that it had dis-

(Testimony of Eugene S. Hawkins.)

posed of its assets down there and that the mill would be shut down for one day and that the men might make application to be employed immediately thereafter; that is right?

A. That is right.

Q. You didn't give any notice to the longshoremen? A. No.

Q. And was it on the 2nd of May when you commenced active operations on behalf of the Juneau Spruce Corporation?

A. I would have to qualify that. I don't recall as to whether it was the first or second day of May.

Q. We can agree on this—there was one day of suspension of operations down there? A. Yes.

Q. And during that day I presume the men came and signed on? A. Yes.

Q. And you re-employed all the men that Roy Rutherford had employed?

A. Yes; and some more.

Q. And they got the same compensation from you as they had received for doing the work for Rutherford? A. Yes.

Q. And the same kind of work was required by the different [131] individuals when they started operating and working for you as they had for Roy Rutherford?

A. Not without exception.

Q. Let us say, generally speaking; that is right?

A. I would say generally, yes.

Q. And the sawmill's business was carried on

(Testimony of Eugene S. Hawkins.)

about the same way as it had been carried on during the Rutherford administration; isn't that right?

A. I don't associate exactly what you have in mind. I had a definite plan for the improvement and more efficient operation which I started on the first day that we took over.

Q. I mean, the general work of cutting lumber?

A. We manufactured lumber.

Q. Substantially the same as he did?

A. Yes—or any other lumber mill.

Q. If there was any lumber sold, it was in the same way as when Rutherford was running the plant; isn't that right?

A. I don't know that to be a fact.

Q. You started delivering lumber to the Engineers' Dock by your carrier; isn't that right?

A. Yes.

Q. And Roy Rutherford had done that before?

A. Yes.

Q. And if a cannery tender pulled in there and loaded lumber, it was the same as on a cannery tender while Roy Rutherford [132] was operating?

A. I couldn't say as to that.

Q. How did you get rid of your lumber which was not sold to the Engineers?

A. I explained that yesterday, the method we used in disposing of lumber to cannery tenders and others, in all phases. I don't know how Rutherford did it.

Q. Let's say, when an Alaska Steamship steamer

(Testimony of Eugene S. Hawkins.)

pulled in to take lumber to your yard in Anchorage or Fairbanks, it was loaded by the members of Local 16, wasn't it? A. Yes.

Q. The same as it had been loaded by members of Local 16 while Roy Rutherford was running the plant? A. Yes.

Q. And if a cannery tender pulled in and wanted lumber, it was loaded on the boat by members of Local 16, wasn't it?

A. No, I wouldn't say——

Q. Who loaded it then?

A. Immediately upon taking over, our insurance companies—I had a conference with them before coming up here about safety features and so on, and we drew up a conclusion of practices that would be the best under that system, and that was that—one of them was that all of our employees should work on our equipment and shouldn't work on any other's equipment. [133]

Q. That was carried out? A. Yes.

Q. So, when your equipment was used, your employees were handling the lumber? A. Yes.

Q. And if anybody else's equipment was used, the longshoremen handled the lumber; is that right?

A. I would say that would be materially right.

Q. What do you mean by "materially"?

A. I don't know of any other instances where any other equipment handled lumber other than the steamship company, and what the steamship company did with the longshoremen was their——

(Testimony of Eugene S. Hawkins.)

Q. How about when a cannery tender pulled in there and wanted a couple thousand boxes and had no means, did they use your equipment?

A. We sold the boxes to the cannery tender and loaded them on their cannery tender.

Q. They used their own equipment?

A. No. We run our own equipment and used our own equipment.

Q. But you landed it on the cannery tender?

A. Yes.

Q. The same as Roy Rutherford?

A. I don't know how——

Q. Do you know how he did it? [134]

A. No, I don't know.

Q. How could he have possibly done it?

Mr. Strayer: I don't think that is proper.

The Court: It is cross-examination.

Q. You used the same crane that Roy Rutherford had used?

A. Yes—cranes, two of them.

Q. Rutherford had used those cranes to load lumber?

A. I never saw Rutherford——

Q. Was there any reason to use them if not for the purpose of loading and unloading?

A. Yes.

Q. What for?

A. To stack for storage and for moving of timbers. One particularly was used for moving timbers from the green chain and had wheels so it could move up and down for stacking of lumber.

(Testimony of Eugene S. Hawkins.)

Q. How do you think he loaded lumber on scows? A. How do I think?

Q. Yes.

A. I imagine he used his own crane.

Q. In other words, as far as appearances were concerned, there was no difference between them while Rutherford was operating or when you were operating; isn't that right?

Mr. Strayer: The witness has already said he didn't know, your Honor. [135]

Mr. Roden: Let him say it again.

The Court: He has already said it.

A. I don't like to assume things I don't know about.

Q. But you can't tell us now of any difference, can you? A. No.

Q. And the longshoremen would come down there when any loading was to be done after the 30th of April, 1947, the same as they had done before April 30, 1947; isn't that true?

A. I don't know what they done before that.

Q. As far as you know, there was no difference; is that right?

A. That is right. I don't know anything about the previous operation.

Q. And this went on until late in the fall of 1947; is that correct? A. Yes.

Q. And it was in the fall of 1947 when we heard the first rumblings about difficulties springing up; isn't that right—between the longshoremen on the

(Testimony of Eugene S. Hawkins.)

one hand and your company on the other hand?

A. I don't know when you heard about anything.

Q. When did you hear; tell us when you heard about it?

A. In July was my first contact.

Q. There wasn't anything serious at that time, was there?

A. I don't know what would be determined "serious."

Q. You know what "serious" means? You are a businessman, [136] aren't you? A. Surely.

Q. Well—serious trouble.

A. There was no threat of a picket line. Their request was for work the same as before.

Q. That wasn't anything much out of the way?

A. What?

Q. For the longshoremen to come and talk to you when they saw what was going on? Put it this way—the first time any difficulties arose was when you started to load the first barge? A. No.

Q. I am talking about serious difficulties.

A. The seriousness of it then was no different than it was in July. There was just a request for work both times.

Q. And you told them you couldn't give them the work? A. Yes.

Q. At this time or by this time you had been negotiating a contract with the I.W.A.; isn't that right? A. Yes.

(Testimony of Eugene S. Hawkins.)

Q. Now, before we go any further let's tell the jury what I.W.A. really means. You and I know, but maybe some people here are not as well advised.

A. You would like to have me tell what the I.W.A. is?

Q. Yes—what the letters stand for, mainly so the jury will [137] know.

A. I.W.A. is International Woodworkers of America which is a subsidiary of the C.I.O. Sawmill & Woodworkers Union.

Q. And their Local was M-271?

A. M-271; yes.

Q. And what are the letters for the longshoremen? A. I.L.W.U.

Q. Which means?

A. International Longshoremen & Warehousemen's Union.

Q. And their Local was No. 16? A. Yes.

Q. In the meantime now—I am now talking about the summer of 1947—you were negotiating a contract with the I.W.A.—that is, the International Woodworkers of America? A. Yes.

Q. And you had a number of meetings with representatives of that Local? A. Yes.

Q. And the thing was discussed many times; that is right, isn't it?

A. The contract was discussed.

Q. As to what would go into it and this and that?

A. Well, the provisions of the contract were changed and made agreeable by both parties.

(Testimony of Eugene S. Hawkins.)

Q. In the meantime you were running under the contract which [138] the I.W.A. had with the Juneau Lumber Mills; isn't that right?

A. No.

Q. What contract were you running under; what understanding were you operating under?

A. We had an understanding to pay the same wages as Rutherford and work the same hours as he was, and other working conditions would be talked over embodied in the new contract as time went on and we could possibly get together and negotiate it.

Q. At that time you were familiar with the contract entered into between Local 271, the Woodworkers, and the Juneau Lumber Mills?

A. I had seen the contract.

Q. When you finally prepared your contract which was signed November 3, 1947, you copied a good portion of the Rutherford contract into your contract; isn't that right? A. No.

Q. None of it?

A. I didn't copy any of it; no.

Q. Who prepared the written contract there?

A. Mr. Card of the Coos Bay Lumber Company prepared that contract.

Q. Now, in that contract there is a provision which says, designated here as the "Union Recognition": "The Union is [139] hereby recognized as the sole and exclusive collective bargaining agent for all the employees of the Employer," that is you, "in its sawmill, manufacturing and retail

(Testimony of Eugene S. Hawkins.)

departments at Juneau, Alaska,"— and then you excluded the superintendents, foremen and so forth. If this was to cover all the employees of the employer, why did you mention that it covered the employees engaged in its sawmill, in its manufacturing plant, and in its retail departments?

A. Well, the retail department is a department by itself, although it is located on the premises. It is run separate of the sawmill operation entirely. The I.W.A. wanted to include that in their agreement to bargain for that one. And manufacturing just covers everything, every phase of manufacturing, and that is why it was worded in that way, and that is a standard wording for all the contracts that I have ever negotiated or been a party of. It is just a phraseology that is accepted by the lumber industry.

Q. And that is exactly the phraseology which was used in the Juneau Lumber Mills' agreement with the same Union; isn't that true?

A. I wouldn't know that, but I would think probably it would because it is a standard phraseology.

Q. All right. Now, Rutherford had three departments down there the same as you did? [140]

A. No.

Q. A sawmill? A. Yes.

Q. And he had a planing and manufacturing department, didn't he? A. Yes.

Q. And he had a retail yard, didn't he?

(Testimony of Eugene S. Hawkins.)

A. Yes.

Q. And he sold out that retail yard substantially what you have—lumber, plasterboard; you sell cement, and you sell this and sell that; isn't that true? A. Yes.

Q. In other words, you carried on the same as Rutherford did in that respect; isn't that true?

A. No. Rutherford didn't make any distinction or separation of the retail plant from the rest of the plant.

Q. He did with M-271, didn't he?

A. I don't know.

Q. You said he had in his contract?

A. No; I don't know.

Q. You have seen the contract?

A. Yes. I didn't know that provision was in there; it could or couldn't be.

Q. You know now it was in there?

A. No. If I could see it—— [141]

Q. Have you a copy of the Rutherford contract?

A. No.

Mr. Roden: Have you got one?

Mr. Banfield: No. We don't operate under that.

Mr. Roden: All right. We will try to produce one.

Q. In all your negotiations with the Longshoremen's Union you gave them the answer that you could not consider their application for employment because you had assigned that particular work to somebody else; isn't that right?

(Testimony of Eugene S. Hawkins.)

A. That isn't the wording that I used.

Q. Well, substantially, it is the summation of what you told them, isn't it?

A. That we had recognized the I.W.A. as the exclusive bargaining agent for our employees and that was the reason we couldn't bargain with them.

Q. That was the sole reason? A. Yes.

Q. None other? A. No.

Q. Now, things kept on running along until the spring of 1948; is that right? A. Yes.

Q. After the winter shutdown you made preparations to start up for the 1948 season?

A. Yes. [142]

Q. And shortly, about the time that the season opened, you were again approached by members of Local 16, and they asked you if you would turn over to them the loading of your barges and other water-borne transportation means, and you had a number of meetings there, and no agreement was reached, and, as you said a moment ago, the reason why you could not see your way clear to do business with Local 16 was because this particular kind of work had been assigned by you to Local 271; isn't that right? A. Yes.

Q. Later on you had a number of meetings with representatives of Local 271 and Local 16 in which Local 271 asked you to turn that work over, namely the loading of the lumber, to Local 16; isn't that true? A. Yes.

Q. And you still said that you couldn't do so

(Testimony of Eugene S. Hawkins.)

because you had assigned that work to Local 271 which was now asking you to turn the work over to Local 13. Is that the position you took then?

A. Yes.

Q. At this time if your sole reason for not assigning this work to Local 16 was because you had turned it over to 271 and 271 asked you to turn it over to 16, your contention was no longer tenable; isn't that true?

A. Yes—that wasn't the sole and only reason that developed. [143]

Q. You found another reason?

A. Another reason had been developed by that time.

Q. You never mentioned that reason either to representatives of 271 or of 16, did you?

A. I don't recall any specific instance; no.

Mr. Roden: I think that is all as far as Local 16 is concerned.

Mr. Andersen: Just a moment, your Honor. Just a few questions, your Honor.

Q. (By Mr. Andersen): Mr. Hawkins, with respect to this contract of November 3rd—I believe that is Exhibit No. 2—when did you say you entered into that agreement and signed it?

A. I didn't understand that.

Q. With respect to the Company and the I.W.A., when did you say you entered into and signed that contract; what was the date?

A. It was signed November 3rd.

(Testimony of Eugene S. Hawkins.)

Q. Prior to November 3rd there was never any actual agreement between the parties about that contract? A. Yes.

Q. As to all terms? A. Yes.

Q. As to all terms? Is that true?

A. Yes. [144]

Q. Now, this exhibit here—didn't you receive word from Mr. Schmidt on October 18th that the Union turned down the proposed contract?

Mr. Strayer: The letter?

Mr. Andersen: I am not referring to a letter. I am asking if he didn't receive word.

Mr. Strayer: I think the witness has a right to see the letter.

Mr. Andersen: I am not referring to anything. I am just referring to word he received.

The Court: The rule here is that before a witness is examined on anything in writing, the writing must be shown him. I don't see that this is——

Q. Didn't you receive word from Mr. Schmidt on October 18th that the contract had been turned down? A. I don't recall it.

Q. Did you or did you not receive any such word? A. I don't know.

Q. Is it your testimony here that prior to October 18th you and this Union had agreed, not disagreed, on the terms of this contract?

A. No.

Q. You hadn't agreed to it on October 18th?

A. I don't know the exact date we agreed, but it was prior to November 3rd. [145]

(Testimony of Eugene S. Hawkins.)

Q. What happened was that on November 3rd, or maybe a day before, you finally came to an agreement on the terms of the contract and on November 3rd signed it; isn't that true?

A. No.

Q. Did you have a contract, rather than an agreement, between you in effect before—on October 1st?

A. We finally came to an agreement on this—all the provisions of the contract. I had business I had to attend to and had to leave. Mr. Card was left with authority to sign the contract, and I don't know the specific day that this agreement amongst all parties was consummated.

Q. When did you leave?

A. I don't know what specific day I went.

Q. What month? A. October.

Q. The first part or latter part?

A. I was gone on November 3rd.

Q. You weren't here on November 3rd?

A. No.

Q. Did you leave in November or did you leave in October?

A. I would say that I left in October.

Q. The first part or last part?

A. I would say the last part.

Q. About how last? [146]

A. It was after Mr. Card's and my arrival back here from the States on the 23rd of October.

Q. You were here the 23rd of October?

(Testimony of Eugene S. Hawkins.)

A. Yes.

Q. And left Mr. Card here to finish the negotiation of the contract, didn't you? A. No.

Q. As a matter of fact didn't you tell him that is what you paid him for—negotiating this contract and seeing that it was negotiated?

A. Yes; but I didn't leave him here. I was here while the final negotiations were taking place.

Q. I assume you left sometime after October 23rd; is that correct? A. Yes.

Q. So, at the time that you left the contract hadn't been signed, had it?

A. No, it hadn't.

Q. And you have no further knowledge of your own so far as those facts are concerned—that is, so far as the negotiating of the contract is concerned? A. It was completed when I left.

Q. That is, you had come into general agreement about certain things; isn't that true—regarding the hours and working conditions and wages to be paid? [147]

A. We came to a general agreement on all the provisions of the contract.

Q. Had you drafted it at that time?

A. Yes.

Q. Was the contract in completed form on that day?

A. I wouldn't definitely say it was typed. It was in completed form.

Q. All you are saying is that you had talked

(Testimony of Eugene S. Hawkins.)

over the terms and conditions of employment, and nothing was drafted?

A. Before I left—I stayed specifically so to be sure I knew all the things that were agreed on by everyone before I left, and it was being drafted. I don't know if it was written on any paper or what. I don't think it was completely typed up in contract form at that time, though it may have been.

Q. As a matter of fact nothing was typed up, was it? A. Yes.

Q. Can you tell me how much of it was typed?

A. No.

Q. As a matter of fact what you were doing was simply looking at the old I.W.A. contract between the I.W.A. here and the Juneau Lumber, wasn't it— A. No.

Q. And discussed those terms and conditions?

A. No. [148]

Q. In any event you were trying to come into general agreement and when it was executed it would be the contract between you? A. No.

Q. Tell me what is wrong about what I have said.

A. In the first place, during the month of June, I believe, or the last part of May possibly, I drafted a contract myself and with all the provisions I thought were fair to both parties, and all the things were in it, and I submitted it to the I.W.A. officers, and they went over it and found provisions they

(Testimony of Eugene S. Hawkins.)

didn't like and thought there should be some changes in it and brought it back.

Q. From that time on you both started, back and forth, and you would agree on something, and there would be a change agreed to on something else, and that continued all the way up until the contract was signed; isn't that true?

A. It continued all the way up to sometime in the last part of October.

Q. Were you here in May and June of 1947?

A. I wouldn't say I was here all the time.

Q. As a matter of fact you spent most of your time away from the mill?

A. I think I probably spent 50 per cent of the time away.

Q. Consecutively, or staggered months or staggered weeks?

A. There was no schedule for it at all. We were just getting [149] the company in operation and there was more or less activity in all branches. I left for various places upon the need for it, so sometimes I was only here a day or two and gone a week, sometimes a month and gone a week. There was no rhyme or reason as to the times for leaving and being here.

Q. And during your absence Mr. Schmidt was in charge; isn't that true? A. Yes.

Q. And stationed here continually with the title of Assistant Manager; isn't that true?

A. That is right.

(Testimony of Eugene S. Hawkins.)

Q. Are you still an employee of the Company?

A. No.

Q. You left the employ of the Company then June 10th of last year?

A. No. August 15th of last year.

Q. August 15th you left the employ of the Company; you still occupy the position of Director of the Company but are not employed by the Company? A. That is right.

Q. Do you know if this contract was signed—that is, Exhibit 2—do you know if it was signed at Juneau, or where was it signed?

A. It was signed at Juneau, Alaska. [150]

Q. Do you know if the contract has been kept here all the time or in the head office in Portland, which, I understand, is the head office of the Company? A. Here all the time.

Q. Did you send a copy of it to Portland?

A. There were numerous copies made of it.

Q. Did you send the contract to Portland with a letter accompanying the contract?

A. I don't recall the specific time of doing it. I did send a copy of the contract to Mr. Card in Coos Bay prior to the signing. Mr. Card may or may not have taken it back for distribution——

Q. Mr. Card was an employee of Juneau Spruce Corporation?

A. Not an employee in that sense.

Q. An agent of the Company, working for the Company during this period of time?

(Testimony of Eugene S. Hawkins.)

A. Yes.

Q. In the Portland office did you see any correspondence regarding this contract after it was signed?

A. My activities in Portland was as a Director, and I never got into any phase of the contract or anything or the files to know whether it was there or to have seen it.

Q. As a matter of fact—when did you return to Juneau after you left in the latter part of October; when did you return? [151]

A. I don't recall the exact time I returned.

Q. Do you recall where you went?

A. I don't know now; I think to the logging camp.

Q. You didn't go to Portland?

A. I am almost sure I didn't.

Q. Do you know when you returned to Juneau?

A. No, I don't know when I returned to Juneau.

Q. Was it very long after November 3rd?

A. No.

Q. When you got back, didn't you take a copy of this contract and send it to Portland for the official files of the Company, advising them it was entered into?

A. I am almost positive that would have been Mr. Card's duties to see that anyone else in the Company would have it.

Q. Didn't you tell Mr. Card when he signed it

(Testimony of Eugene S. Hawkins.)

to send it to the officers of the Company for their records? A. No.

Q. Or did you understand he would naturally do such a thing?

A. It never entered my mind. This is the main office.

Q. Is this? I thought it was Portland from what you said.

A. There is a Portland office, but everything is done in this office.

Q. Is that where the President maintains his office? A. Yes. [152]

Q. You maintain your office of Vice President down there? A. Not in Portland.

Q. And the corporate offices are in Portland and the operational offices are in Juneau; is that what you mean to say? A. Yes.

Q. By the way, I understand from this contract that $595,000, roughly, was paid for what you bought from the Juneau Lumber; is that true?

A. That was for physical assets.

Q. I say, for what you bought from the Juneau Lumber, you paid $595,000?

A. With the inventories of logs, supplies and other things it would come to a bigger figure than that.

Q. How much of the physical assets, what percentage of the physical assets were located here in Juneau?

A. I don't know how to break this down.

(Testimony of Eugene S. Hawkins.)

Q. Just approximately?

A. I don't know how to give an approximate. We have a mill and retail yard in Fairbanks——

Q. You said you made a survey. If you made a survey, you must have broken it down into valuations. If there were twenty properties, it is certain every property must have had a valuation.

Mr. Banfield: When counsel started out, he said he was going to ask questions preliminary——

Mr. Andersen: I didn't make such a statement.

Mr. Banfield: All the questions about the Portland office or conversations where assets were split up has nothing here to do with the issues of this case, the right of this Company to assign work to whomsoever it pleases, and I object to it as irrelevant, and it is tiring everybody out and burdening the record.

Mr. Andersen: When the contract was introduced in evidence, I objected to its introduction as completely immaterial, among other objections. Over my objection the Court permitted it to go into evidence. If I understand the time-honored scope of cross-examination, I may examine on anything introduced. I think that is correct. He introduced it in evidence. I want to examine the witness on it.

The Court: That is, generally speaking that is true, but it seems to me that it is always subject to the condition that it be relevant or material. If you want to examine him as to the events leading up to making the contract, as you have, and what actually

(Testimony of Eugene S. Hawkins.)

occurred at the time of its execution, that is proper cross-examination. But what do you claim, so far as materiality is concerned, for a break down of the purchase price into percentages?

Mr. Andersen: I think, if the Court will permit me a few questions, I think the Court will see the development.

The Court: The Court will permit you to proceed. [154]

(Whereupon, the Court recessed until 2:00 o'clock p.m., May 2, 1949, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; whereupon the witness Eugene S. Hawkins resumed the witness stand and the cross-examination by Mr. Andersen was continued as follows:)

Q. What value did you place upon the property of the Company here in Juneau?

A. There never was any break down of this operation prior to the Juneau Spruce purchase.

Q. In other words, you simply considered the whole thing as one lump parcel? A. Yes.

Q. So far as you personally are concerned when making the valuation, didn't you go from property to property and place a value on each separate property?

A. No, I wouldn't say that I did.

Q. Then how did you arrive at the sum of $595,000.00—simply by looking at the whole thing and placing a value on it?

(Testimony of Eugene S. Hawkins.)

A. Yes. The possibility of its earnings had a bearing on the value of it.

Q. Naturally.

A. And the outlets it had through the retail yards in Anchorage and Fairbanks and——

Q. That was the good will side of the business?

A. Yes. [155]

Q. But of course you didn't pay the good will part of the business; you simply bought the physical assets? A. That is right.

Q. So the possibilities of profit were not considered in the purchase price then, were they?

A. In the light of the thought of whether or not it was worth that much, we never did go into an actual appraisal of the thing.

Q. How many properties were there altogether?

A. A retail yard, buildings and installation in Anchorage, a sawmill and retail yard and buildings in Fairbanks, a logging camp and equipment in Sea Otter Sound, and this sawmill here, boats, and——

Q. Trucks? A. Carriers; no trucks.

Q. I understand your testimony is that in trying to arrive at the sum of $595,000.00 you didn't break them down to determine the valuation of each property and then add them up to come to $595,000.00? A. We didn't do that.

Q. Did you inquire, Mr. Hawkins, as to the total amount of wages paid longshoremen during the preceding year from the date your corporation purchased the plant? A. No.

(Testimony of Eugene S. Hawkins.)

Q. Did you inquire as to the total amount of money paid to [156] longshoremen by the plant and charged to customers and the work done by longshoremen and absorbed by the corporation?

A. I never went into the Juneau Lumber Mills costs or amounts of money taken in or disbursed.

Q. At the time of the conference with representatives of Local 16, did you compile any figures to show the total amount of expense charegable to the Juneau Spruce Corporation directly—that is, if you gave them the work that the I.W.A. said they were willing to give them?

A. The I.W.A. didn't say they were willing to give them any work at this meeting.

Q. Whenever the time was, did you at that time make a computation of the total amount of money you would pay for this barge work—that is, all this work from the rail out? A. I believe I did.

Q. What was the total computation of wages you would pay, chargeable to your Company?

Mr. Strayer: I don't see where it is material. I suppose counsel is trying to get at whether it is a small or large amount of money. I don't see its materiality. Mr. Hawkins took the position the contract entitled him to. I object on that ground.

Mr. Andersen: Does the Court want argument on that?

The Court: You may state your views. [157]

Mr. Andersen: There is that reason and also more reasons. The Taft-Hartley law has a pre-

(Testimony of Eugene S. Hawkins.)

amble. This part of the Act states that one of the purposes, and probably the main purpose for its passage, is to have industrial tranquility and that management and labor get together and iron out their differences. At the appropriate time—may it please the Court, if a corporation or a company unreasonably refuses to enter into labor relations with any group or any union, particularly when at the core there are no jurisdictional issues involved—we will take the position at the appropriate time that it is contrary to public policy and they can't violate the spirit of the act, as he admitted has been done, and then secure damages for $1,000,000.00 for a minimum amount of expense to the company. Here is a corporation that paid $595,000.00, eventually to make $1,000,000.00 in the next eight months for net profit, and then refuses to enter into labor relations.

The Court: That is more of an argument—and counsel should refrain from arguing matters of that kind.

Q. Will you give me the figures please?

A. I have no way of giving you the figures. It was just solely on my behalf to see what moneys was involved. I don't recall what the figures was nor recall the number of employees involved.

Q. It wouldn't have amounted to 2 per cent of your pay roll, would it? [158]

A. I don't have the personal knowledge to say that or anywhere close to it.

(Testimony of Eugene S. Hawkins.)

Q. You are Vice President? A. Yes.

Q. You ran the mill and were Manager for some little time? A. Yes.

Q. During the time you were there and actually managed—how long were you there, from May 1st to August 15th? A. Yes.

Q. What was the approximate longshore pay roll directly chargeable to and absorbed by the Juneau Spruce Corporation—I don't want dollars and cents; just approximately?

Mr. Strayer: Will you specify whether it was work by the longshoremen or longshore work performed by the sawmill employees?

The Court: Yes.

Mr. Andersen: I intended to ask that secondly.

Q. First, by longshoremen?

A. I just couldn't answer that.

Q. A very small amount, wouldn't it be?

A. As a comparison to the purchase price of the mill, using that as a comparison?

Q. No. As a comparison to the usual pay roll of the Company.

A. I would say very small as compared to the usual pay roll of the Company. [159]

Q. Less than 2 per cent? Less than 1 per cent?

A. I have no way of saying; but a very small amount.

Q. During the same period of time, tell me the amount of pay roll paid to the men who took care of loading cargo and the pay roll paid to and ab-

(Testimony of Eugene S. Hawkins.)

sorbed by the Juneau Spruce Corporation from the rail out, the same work the longshoremen came to you and said they wanted to do with I.W.A. consent from the bull rail out; what was the total amount?

A. That was done in conjunction with our yard work. Our yard employees did it. It was all intermingled with it. There was no break down of a specific job—loading scows, stacking or unstacking lumber. It was all made up in a day's work for them.

Q. During the period from the time you took over until you left there in August, how many barges did the Company operate?

A. Well, at one time—or do you mean the total number of barge shipments made?

Q. No. The total number of barges you operated, not the shipments made; the total number of barges you operated?

A. We started out with one barge and added another, then two more and took one off.

Q. An average of two?

A. I would say an average of three.

Q. And how long would they be at the plant; how long to load [160] and unload and make trips?

A. From one week or less. The barge was used in supplement to our storage area. We didn't load it—we loaded as lots were completed.

Q. In other words, would a total of two men be assigned to work on those barges steadily? Would it amount to that much?

(Testimony of Eugene S. Hawkins.)

A. I don't have any way of knowing that.

Q. How long have you been in the lumber business? A. Since I was born.

Q. How old are you? A. Thirty-seven.

Q. All your life? A. All my life.

Q. How many men would you say normally would be assigned to work on those barges steadily?

A. When we actually were loading lots on the barges, we had one man attending the slings on the barge and sometimes two, and one man operating the crane, and one man attaching the slings on the dock; and when this particular lot was put on there, they did what else there was in the yard—stacking in the yard or unstacking—until one or more lots were completed to go on the barge. When we were in the actual process of putting lots on the barge, a total of four men were used. [161]

Q. It wouldn't average out to the total of two men per week, would it?

A. I can't see how I could answer that.

Q. You mean you can't answer that?

A. What it would average out—it takes four men to do the job, not less than three.

Q. Granted. But they didn't work full time, did they? A. No.

Q. During the period from May to August, would it average out as much as the full time of two men a week?

A. Steadily employed? Two men a week?

Q. Would it average that?

(Testimony of Eugene S. Hawkins.)

A. I don't know how I could use a basis of thought to arrive at that figure.

Q. If you have five men working on the job, how long would it take to load or unload a barge?

The Court: It seems to me you spoke of two things both of which differ—one, loading a barge for storage; and one, for shipment. One might be slow and the other leisurely.

Mr. Andersen: Iwill split it up as your Honor suggests.

Q. Assuming you are loading for shipment, how long would it take five men to load the barge for shipment?

A. That would depend on the particular orders. We cut on orders. Everything that went on the barge was a definite [162] customer's order.

Q. You certainly never used more than five men loading barges?

A. Yes, I think there was a time when we had more than five men. We loaded one barge particularly and we finished the loading with two shifts, so on that particular barge there were more than five.

Q. It wouldn't average more than five on any one barge at any one time; that was an exceptional circumstance—normally five?

A. You quoted a figure of five. Four is nearer, normally four. Sometimes they would work half a day, sometimes two hours, sometimes all day. It would just depend on the logs we were sawing and

(Testimony of Eugene S. Hawkins.)

the filling of customer's orders, how it developed.

Q. Then four of your men were assigned to this particular type of work and, if I understand your testimony correctly, they worked when they were required to work on these barges but they never worked full time in performing work on the barges?

A. There never was four men assigned to work on the barges. They were picked arbitrarily.

Q. All right. Four men were picked arbitrarily to work on the barges, but they never did work full time? A. No. [163]

Q. Is the same statement substantially true regarding the storage of lumber on barges, as his Honor indicated? A. Yes.

Q. Four men part time? A. Yes.

Q. What is the total number of employees of the Juneau Spruce Corporation?

A. We had a maximum of 211, I believe.

Q. That is here, is it, at Juneau?

A. Yes, I believe that is right.

Q. How many loggers do you employ?

A. About fifty.

Q. And how many at these other plants that you employ?

A. It varies from three to ten depending on when we get a shipment in. While we have available to store lumber in our yards—the permanent employees would be three or four.

Q. Would the three to ten include the office force? A. Yes.

Q. Everybody? A. Yes.

(Testimony of Eugene S. Hawkins.)

Q. 275 employees altogether. Would that be about correct?

A. I would say that would be; yes.

Q. In respect to the picket line that you mentioned, and you said there were four pickets there?

A. To start with; yes. [164]

Q. How long were four there?

A. I don't recall the exact number of days. It wasn't very long.

Q. A few days? A. Yes.

Q. How many thereafter? Two? A. Yes.

Q. I understand your plant faces on the main street of this city? A. Yes.

Q. And also faces the water front?

A. Yes.

Q. And has at least three entrances; is that correct?

A. You can enter the plant at a dozen different places.

Q. And that is along the 1100 feet you mentioned? A. Yes.

Q. Was that 1100 feet along the water front and the main street of the town? A. Yes.

Q. And you can enter the plant at a dozen places? A. Yes.

Q. The pickets, after the four, remained in front of the main gate; is that correct?

A. In front of where our time clock was.

Q. Would that be considered the main gate?

A. That would be considered the main gate; yes.

(Testimony of Eugene S. Hawkins.)

Q. Is that where they are now? A. Yes.

Mr. Andersen: I think that is all.

Redirect Examination

By Mr. Banfield:

Q. Mr. Hawkins, after these pickets were established, who came to work?

A. After the pickets were established on the 10th of April, our foremen and supervisor employees.

Q. Did any of the mill hands come to work?

A. Yes, some of the mill hands came to work.

Q. How many?

A. I think about possibly eight or ten.

Q. And did they go through the picket line?

A. Yes.

Q. Were they enough to carry on any operation in the mill? A. No.

Q. Did the mill operate thereafter while you were manager up to June 1, 1948? A. No.

Q. Was there any work performed?

A. Yes.

Q. What did it consist of? [166]

A. There was some lumber in the process of being processed at that time, and our retail yards were in need of flooring, and there were a few special items we had in our kiln, and these fellows manufactured that lumber into these specialty items preparatory to shipping them.

Q. After that work was completed what happened?

(Testimony of Eugene S. Hawkins.)

A. The only thing that was done was just maintenance and the likes of that at the plant.

Q. Now, Mr. Hawkins, when Mr. Andersen, counsel for the defendant I.L.W.U., was questioning you, he asked you as to the amount of funds that were paid longshoremen and absorbed by the Juneau Spruce Corporation, and you told him that, I believe, you didn't know how much it was?

A. Yes.

Q. Now, what is your understanding of what he meant by funds paid and absorbed by the Juneau Spruce Corporation?

A. Well, the only monies that was paid longshoremen that was absorbed by the Juneau Spruce Corporation was the tie-up charges. I don't know whether there was one vessel or two that moved up to our dock, and I assume that is what he had reference to.

Q. What would those tie-up charges amount to for each boat?

A. It is a small amount. I don't know how much it would amount to.

Q. Approximately? [167]

A. Ten, maybe fifteen or twenty dollars; I don't know.

Q. When was the first time the I.W.A. consented to this barge loading work being turned over to the I.L.W.U.?

A. In the early days of April, 1947—or eight, I mean.

(Testimony of Eugene S. Hawkins.)

Q. 1948? A. Yes.

Q. Was that at a meeting at the mill?

A. Yes.

Q. Was that the meeting you referred to as happening just before the picket line went on?

A. Yes.

Q. Where the I.W.A. and longshoremen and the Company all had representatives present?

A. Yes.

Q. Was that the first time the I.W.A. consented to this work being assigned to the longshoremen?

A. Yes.

Mr. Andersen: You mean, within the knowledge of the witness?

Q. Yes. Within your knowledge?

A. Yes.

Q. Did the Company consent that this work be done by the longshoremen? A. No.

Q. Did the Company insist that it be done by the I.W.A.? [168] A. Yes.

Q. Were you the one that made that decision to insist on that? A. Yes.

Q. And what were your reasons for so insisting?

Mr. Andersen: I object; it is incompetent, irrelevant and immaterial, may it please the Court.

The Court: Objection overruled.

A. Well, we had recognized the I.W.A. as the exclusive bargaining agent, and they had formally signed the contract, and it was agreed that was included in their scope and in their work.

(Testimony of Eugene S. Hawkins.)

Q. How long had the contract been in effect?

Mr. Andersen: The contract is the best evidence, may it please the Court.

The Court: Yes. It is already in evidence.

A. Am I to answer that question?

The Court: No.

Mr. Banfield: I will withdraw the question.

Q. Were there any other reasons?

A. Yes.

Q. What were they?

Mr. Andersen: To which I object on the grounds that it is immaterial and, may it please the Court——

The Court: The same ruling.

Mr. Andersen: Self-serving. [169]

A. Am I to answer?

Q. You may answer.

A. In the first place there were new officers for the I.W.A. that we were talking with, different than when we signed the contract, and these new officers weren't familiar with the interpretations and agreements made on that day and they had—they were under the impression that the contract——

Mr. Andersen: May it please the Court, I am going to object to this witness testifying to what anybody else had an impression of.

The Court: Yes; I think you will be limited to what was said.

Q. What did they say in that respect?

(Testimony of Eugene S. Hawkins.)

Mr. Andersen: To what respect?

Q. What did the I.W.A. say in respect to whatever you were going to talk about now?

Mr. Andersen: I submit that is speculative and conclusory.

The Court: I assume from what has gone on before that the question is directed to the witness' knowledge of what they said as to their understanding of the contract.

Mr. Banfield: That is right, your Honor, and why he refused to release them from the contract.

Mr. Andersen: His understanding of the contract. [170]

The Court: Not his understanding; the understanding they expressed. I think that is it.

Q. Go ahead.

A. They said they had been informed a contract which the longshoremen had with the Juneau Lumber Mills was still in effect for them to do that work. I told them that it wasn't in effect, if they ever had one. And that is the gist of what they said. I went on to tell my other reasons of why we wanted them to do the work.

Q. What were the other reasons?

A. That, if they gave this work of barge loading away so that we would have another union to bargain with, the electricians would demand the same thing, and the plumbers, and the machinists and teamsters, and we would have six or eight unions to deal with, and we desired to deal all with one

(Testimony of Eugene S. Hawkins.)

union; that, plus the fact that we had lived up to our side of the agreement and felt they were morally obligated to live up to their side of the agreement even though they had changed officers which of course didn't know what the other ones had done.

Q. Were there any other reasons why you didn't want to make an agreement with I.L.W.U.?

Mr. Andersen: That is—you are talking about Local 16?

Q. Local 16. [171]

A. Well, that is all I can recall right at this moment.

Q. How did you feel with respect to the value of the contract—I am trying to refresh your memory at this point—the value of the contract with the I.L.W.U.? A. I don't get that.

Mr. Andersen: I don't get that either. Will you please repeat the question, Miss Reporter?

Court Reporter: "How did you feel with respect to the value of the contract—I am trying to refresh your memory at this point—the value of the contract with the I.L.W.U.?"

A. Well, the value of the contract with the I.L.W.U, from all I have seen since I have been in the Territory, would have been of little value. They agree to one thing and change it every little while to add more or——

Mr. Andersen: I move all this be stricken.

Mr Banfield: If the Court please, I will establish the purpose in the next question.

(Testimony of Eugene S. Hawkins.)

The Court: The motion is denied anyhow. You may proceed.

Q. Now, Mr. Hawkins, did your opinion of the value of the contract with the I.L.W.U. influence you in this decision not to let the I.W.A. be released from that part of the contract?

A. It very definitely had a bearing.

Q. Did the previous demands of the longshoremen—requiring [172] other further work than just loading barges—in the previous meetings have any effect upon your decision? A. Yes.

Q. How did that affect it?

A. To go back over them, at first they wanted all the work including carriers and lift trucks, and the work of removing the carrier blocks, and they semed at every meeting to have a little revision of their demands so it wasn't consistent, and I assumed it would always be that way. That is what I have seen as long as I have been here.

Q. Mr. Hawkins, were these reasons given to the I.W.A.? A. Yes.

Q. At what time?

A. In this—about April—in the early days in April.

Q. At this meeting just before this picket line was established? A. Yes.

Q. Do you remember who it was who mentioned these things to the I.W.A.? A. Yes.

Q. And did that alter their position any?

Mr. Andersen: I am going to object to this line

(Testimony of Eugene S. Hawkins.)

of questioning, may it please the Court. It is strictly immaterial.

The Court: Well, I think it is already apparent [173] that it didn't alter their position.

Q. Who made these statements to the I.W.A. members at the meeting?

Mr. Andersen: To what?

Q. The I.W.A. members.

A. Mr. Banfield.

Mr. Andersen: What was the name?

A. Mr. Banfield.

Q. Was that in the presence of the I.L.W.U. members, or after they left?

A. After the I.L.W.U. members left.

Mr Banfield: That is all.

Recross-Examination

By Mr. Roden:

Q. Mr. Hawkins, the real reason why you didn't want to turn this work over to the longshoremen was that you expected the work to be done cheaper, wasn't it?

A. No. It would have been done cheaper no doubt, but it wasn't any bearing on it.

Q. I understood you to say a moment ago that the electricians would also come and ask for something; is that right?

A. That—and the plumbers and machinists.

Q. You had electricians there already, hadn't you? A. Yes. [174]

Q. And they didn't ask for anything, did they?

(Testimony of Eugene S. Hawkins.)

A. No.

Q. And you had plumbers there, didn't you?

A. Yes.

Q. They hadn't asked for anything, had they?

A. No.

Q. You say the officers of the I.W.A. had changed between the time that the contract was signed and when you had these talks in April, 1948?

A. Yes.

Q. It wasn't in order to bind the officers that you made a contract, was it?

A. It wasn't what?

Q. You didn't want to bind the officers? In other words, you didn't want to bind Glen Kirkham by the contract made on November 3rd; you wanted to bind the union for the 200 or 250 men working there, didn't you? A. Yes.

Q. And those 200 men told you and begged you to turn the work over to the longshoremen?

A. I presume it was their representative. The fellows who made the statements said they were representatives.

Q. You know several meetings were held in the early part of April, don't you, by the sawmill workers, the I.W.A.?

A. I don't know how many. [175]

Q. You were told about them?

A. I was told of at least one. I don't know how many more there were.

Q. You know 200 sawmill workers were present

(Testimony of Eugene S. Hawkins.)

who voted on turning the work over to the longshoremen? A. I don't know how they voted.

Q. You weren't told how they voted?

A. I was told they agreed to give the longshoremen their work.

Q. Exactly. You were told that not only once but several times—at least twice; isn't that true?

A. Only once.

Q. Didn't you give them time off from work to attend a meeting at which this very question came up?

A. No; we didn't give them any time off.

Mr. Roden: That is all.

Recross-Examination

By Mr. Andersen:

Q. Just a few questions. Do you know the difference in the wage scale if the longshoremen loaded these barges and the amount of money you paid the men who loaded the barges—the amount per hour?

A. I know there is a difference.

Q. How much, do you know? A. No.

Q. Would it be more or less?

A. The longshoremen get more.

Q. You mentioned another I.L.W.U. contract. To which contract did you refer?

A. The one they referred to. Originally they said that they had——

Q. Could I interrupt? You mean the contract between the Juneau Water-front Employers and

(Testimony of Eugene S. Hawkins.)

the Juneau Lumber Mills? A. Yes.

Q. As I understand you, you had never operated under that contract at all, had you? A. No.

Q. So you had no experience with that contract at all, had you? A. No.

Q. That is the contract to which you referred when Mr. Banfield examined you; is that correct?

A. Yes.

Q. Do you know how long the Juneau Spruce Mills had done business with Local 16 under a collective bargaining contract?

Mr. Strayer: Do you mean Juneau Lumber Mills?

Q. Juneau Lumber Mills. A. No.

Q. Had you made any inquiries? A. No.

Q. You didn't inquire how long the longshoremen had done work for the Juneau Lumber Mills?

A. No.

Q. You had no personal experience with the contract at all? A. No.

Q. I see. Now, you mentioned that the demands of the I.L.W.U. were inconsistent and you thought they might want to organize other portions of your plant; is that what you said?

A. Well, I didn't say organize other portions of our plant, but they were not consistent with their demands and it might carry back in that portion.

Q. Did I understand you said they were wanting more and more work? A. No.

Q. Actually they were asking for less and less?

(Testimony of Eugene S. Hawkins.)

A. Yes.

Q. First they wanted to move the lumber from the last place of rest, from there to the boats or docks? A. Yes.

Q. Then, as I understand it, you said some member of Local 16 said he thought that was unreasonable and they modified their demands and asked you only for typically longshore work, from the last place of rest or bull rail to the boat or dock; is that correct?

A. Partially correct. He didn't represent himself as being a [178] member of the local union.

Q. Is everything else substantially correct?

A. Yes.

Q. And from that point on all they requested was that you turn the work over to them from the bull rail out; that is correct, isn't it?

A. From the bull rail out; yes.

Q. But of course you insisted that the I.W.A. continue to do the work; isn't that correct?

A. Yes.

Q. And despite the fact that four men would only be used part time, you shut down the mill rather than hire these two or four longshoremen; is that true? A. No.

Q. You didn't give the work to the longshoremen? A. We didn't shut down the mill——

Q. You didn't give the work to the longshoremen? A. No.

Q. You knew, if you gave the work to the long-

(Testimony of Eugene S. Hawkins.)

shoremen, all the men would return to work and the mill would function at full blast, didn't you?

A. Yes, I presume.

Mr. Andersen: That is all. Thank you. [179]

Redirect Examination

By Mr. Banfield:

Q. Mr. Hawkins, this visit Mr. Andersen spoke of by a representative he spoke of of the local union, and you said he was not a representative of the local union, who did he represent?

Mr. Andersen: That is a conclusion, may it please the Court. He referred to Mr. Albright, referring to some six months before.

The Court: Regardless of what he referred to, if he can state of his own knowledge, he can so state.

Q. Who did he say he represented?

A. He said he represented I.L.W.U. International.

Mr. Banfield: That is all.

Mr. Andersen: That is all.

(Witness excused.)

VERNE ALBRIGHT

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Strayer:

Mr. Strayer: We desire that the record show that Mr. Albright is a hostile witness and we reserve the right under the court rule to cross-examine and impeach his testimony if necessary. [180]

Mr. Paul: Your Honor, the defendants are an unincorporated association, and Mr. Albright is not a party, and our court rule goes only to the parties. A foundation must be laid first.

The Court: It is correct that a foundation must be laid for it, but there is no impropriety in apprising that the witness, regardless of whether he is a party or not, is hostile.

Mr. Strayer: Shall I proceed?

Mr. Andersen: Do I understand the Court is permitting the witness to be called as an adverse witness or simply as plaintiff's own witness?

The Court: He is plaintiff's witness.

Q. State your full name, please.

A. Verne Albright.

Q. Where is your home?

A. Ketchikan, Alaska.

Q. By whom are you employed?

A. International Longshoremen's & Warehousemen's Union.

(Testimony of Verne Albright.)

Q. That is the International with headquarters in San Francisco? A. Correct.

Q. How long have you been employed by them?

A. Since the 10th of November, 1947.

Q. Do you have a title? [181]

A. Yes, sir.

Q. What is it?

A. I am classed as International Representative.

Q. What is your territory?

A. Alaska; the Territory of Alaska.

Q. Do you know the names of the officers of the International Longshoremen's & Warehousemen's Union for 1947?

A. In 1947 Harry Bridges was President; Bob Robertson—or R. J. Robertson—was First Vice President; Germain Bulcke was Second Vice President; and Louis Goldblatt was Secretary-Treaurer.

Q. Can you give us the same information for 1948? A. The same officers.

Q. Are they the same today?

A. They were elected in 1947 for a term of office which runs for two years.

Q. Are they the same officers now then?

A. Yes.

Q. What officer do you report to, Mr. Albright?

A. I usually reported to Mr. Bulcke or Mr. Robertson. They are the head of the organization.

Q. The International Longshoremen's & Warehousemen's Union exercises jurisdiction over longshore workers in what part of the continent?

(Testimony of Verne Albright.)

A. The West Coast, Canada and Alaska. [182]

Q. Covering ports of the West Coast, Alaska and Canada? A. Most of them.

Q. Are there any on the West Coast that are not I.L.W.U.?

A. I think Tacoma, Washington, and I believe —you mean——

Q. Do you know what they are?

A. I don't know whether Port Angeles is.

Q. Aberdeen and Anacortes?

A. Anacortes may be.

Q. How about Olympia? A. I.L.W.U.

Q. Are you acquainted with Jack Berry?

A. I met him first this month of April in San Francisco.

Q. Do you know what position he holds with the I.L.W.U.?

A. International Representative in Canada.

Q. Where is his headquarters?

A. On Vancouver Island—Vancouver, Washington; I believe in Washington. Vancouver, B. C.

Q. Do you know what territory—British Columbia, is that his territory? A. Yes.

Q. And now, speaking particularly of Prince Rupert which is in British Columbia, is that in your territory or Mr. Berry's territory?

A. That is in Mr. Berry's territory.

Mr. Andersen: May it please the Court, at this time [183] I am going to object to any testimony regarding Prince Rupert. That is in Canada, and

(Testimony of Verne Albright.)

I understand these gentlemen are proceeding under the law of the United States which has no application in Canada, and I think we would be wasting time regarding that.

The Court: I think what happens in Canada is evidentiary. Objection overruled.

Q. Do you ever perform any duties yourself at Prince Rupert?

A. Occasionally I go over there. I have once.

Q. Were you served with a subpoena, Mr. Albright, to produce certain records?

A. That is right.

Q. Have you brought them with you?

A. I sent a constitution here and the directory of the International Union.

Q. Have you brought any other records with you? A. I had no other.

Q. You were asked to bring with you——

Mr. Strayer: May I have that constitution there, (addressing the Clerk of the Court)?

Mr. Andersen: I have the constitution. It is the same one.

Mr. Strayer: Yes. We have agreed or stipulated it is a correct copy of the constitution as it existed in 1947.

Mr. Strayer: April, 1947, I believe. He has sent this directory, but he has already given you the information.

The Court: You say it has already been stipulated that this is the constitution?

(Testimony of Verne Albright.)

Mr. Andersen: Yes.

Mr. Strayer: Yes. Does our stipulation, Mr. Andersen, show this was the constitution at all times since April 11, 1947?

Mr. Andersen: Well, there have been some amendments to that constitution at the last convention which was held last month, but I don't believe——

Mr. Strayer: Other than that, this is it?

Mr. Andersen: I don't believe you have to worry about it. I don't believe there was anything that would have a direct bearing on this. I think it had reference to particular things that we are not interested in.

Mr. Strayer: With that exception it is stipulated that this is the constitution in effect during all that time from 1947?

Mr. Andersen: Yes.

Q. Well now, Mr. Albright, you were asked to bring with you today correspondence and telegrams, or copies thereof, between yourself and the International, or any officer, agent or employee or representative of the International, which you wrote or which you received between October 1, 1947, and April 20, 1949, relating to any labor dispute [185] with the Juneau Spruce Corporation; did you bring any of that material? A. I had none of them.

Q. Where is it?

A. It is my habit not to carry a file——

(Testimony of Verne Albright.)

Mr. Andersen: Just a minute. That assumes there is such.

Mr. Strayer: I don't think it is a violent assumption. Mr. Albright's affidavit is on record saying he did have——

Mr. Andersen: That is assuming something not in evidence.

A. When I receiye a letter, I answer it or carry out the instruction, and destory or tear it up and throw it in the waste basket at whatever hotel I am.

Q. You destroy copies?

A. I don't make copies.

Q. Carbon copies? A. No.

Q. Letters or telegrams connected with the International, you have destroyed?

A. That is general correspondence; yes.

Q. How much correspondence did you have with the International or any officer or agent of the International regarding this Juneau Spruce Corporation dispute? [186]

A. I have had some, not a great deal. I received some correspondence, too, and it was suggested I call on the mill one time. I had one letter from the International that they had discussed it down below and there might be a possibility of settlement.

Q. Not going into what you put in your letters, you did write the International concerning the dispute?

A. Just generally, that the dispute was in progress.

(Testimony of Verne Albright.)

Q. You made a report to them from time to time as to the progress of the dispute?

A. That is right.

Q. Do you make any copies of the reports you make to the International?

A. Any carbon copies, you mean?

Q. Yes.

A. The reports, no. My report is in the form of a letter, and I make one copy and send it to the International Office, 158 Golden Gate Avenue.

Q. So far as you know, Mr. Albright, are those reports or copies of those reports available in Alaska? A. Not to my knowledge.

Q. Are any of the letters or telegrams, or copies of those letters or telegrams, which you received from the International or any officer of the Internation, available anywhere in Alaska? [187]

A. Not to my knowledge.

Mr. Strayer: I think that is all, your Honor. However, we would like the right to recall this witness later if something develops during the testimony.

The Court: All witnesses are subject to recall.

Mr. Strayer: Any cross-examination?

Mr. Andersen: Not at this time.

(Witness excused.)

HORACE O. ADAMS

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfied:

Q. Would you state your full name?

A. Horace O. Adams.

Q. Will you tell us what your occupation has been since the first day of March, 1948, whatever position you held?

A. I was agent for the Alaska Steamship at that time.

Q. How long did that continue?

A. Until the first of January this year.

Q. During that time did you have anything to do with the management of any dock in Juneau?

A. Yes. We took over the dock company, Alaska Dock and Storage Company.

Q. Do you mean the Alaska Steamship Company took it over? [188]

A. Yes. When I say "we," I mean the Alaska Steamship Company.

Q. What date was that, Mr. Adams?

A. I couldn't say right now, Mr. Banfield.

Q. In March, 1948, who operated the dock owned by the Alaska Dock and Storage Company?

A. That is a separate company, the Alaska Dock and Storage Company, and Mr. McDonald was the cashier and manager.

(Testimony of Horace O. Adams.)

Q. Is it your job to look after the boats, while in port, of the Alaska Steamship Company?

A. Yes, sir.

Q. I will ask you if you have any knowledge of a shipment of material which arrived at Juneau on Tuesday, March 16th, on the "Baranof" and was assigned to the Juneau Spruce Corporation?

Mr. Andersen: March 16th, what year?

Q. 1948.

A. I remember the incident. I wrote a letter concerning it.

Q. Tell us what happened with respect to that assignment during that time and after it arrived.

A. Our consist wire—that is a wire out of Seattle—I think it was 69 or 70 tons, I am not sure, for the Juneau Spruce Corporation, and it was my prerogative whether I sent the ship to the Juneau Spruce Dock or discharged the freighter at our dock. In other words, it wasn't in the sailing orders of the captain to go to that dock. Anything over 50 tons I could send to the Union Oil or Standard Oil or any other dock, so I called the Spruce Mills and told them how much freight they had and told them we would discharge at their dock.

Q. Go ahead.

A. And then I think the ship arrived at three or four in the afternoon; I am not sure of the time; so I made arrangements to order the longshoremen for the discharge at the Spruce Mills Dock.

Q. Where would those longshoremen be working for the Steamship Company?

(Testimony of Horace O. Adams.)

A. All I hired is the sling tenders.

Q. Did they work in the hold or on the dock?

A. On the dock.

Q. What was that work?

A. To hook on and hook off the slings.

Q. Does the Steamship Company always pay for that service? A. Yes, sir.

Q. Even though they were working on somebody else's dock?

A. We pay the slingmen.

Q. Go ahead. What happened after you ordered these men?

A. When I ordered the men, I went out to the longshore boss and told him how many men we would need down there. He was with the Chief Mate, Mr. Buckler. He said we would work two gears, so I ordered four sling tenders, and the [190] longshore boss told me, "I might as well tell you right now we are not going to take any freight off at the lumber mill."

Q. Who was the longshore boss?

A. Tony Wukich.

Q. Do you know if he was an officer of Local 16?

A. No, I don't.

Q. What did you do after that?

A. Well, I called Mr. Hawkins and I told him what I was up against, and I said——

Mr Andersen: I object. It is hearsay.

The Court: He is not attempting to relate now what somebody else told him.

(Testimony of Horace O. Adams.)

Mr. Andersen: It is still hearsay and also, as I see it, immaterial.

The Court: I don't apprehend that the witness needs to state what he said, but rather what was done.

Q. Go ahead, Mr. Adams. What did you do? You contacted Mr. Hawkins?

A. I called him on the phone and said, "We can't delay the ship." My version was to put the freight off at our dock, although it would be a terrible expense to the Spruce Mills. He said, "That is up to you."

Mr. Andersen: I move that be stricken as hearsay.

Mr. Banfield: If the Court please, what Mr. Hawkins, [191] told him in a conversation is not hearsay. If Mr. Hawkins said what somebody else said—he is one of the parties to this suit.

The Court: I think it is hearsay. He should state what was done rather than conversation leading up to the doing of it.

Q. Where was the freight unloaded, Mr. Adams?

A. The freight was discharged at our dock.

Q. Now, was there ever any other time that you had any dealings with the Juneau Spruce Corporation and the longshoremen involving shipments for the Juneau Spruce Corporation?

A. I don't know just what you mean We had lots of dealings. You mean after this trouble?

Q. Yes.

A. Yes. They were desperately in need of——

(Testimony of Horace O. Adams.)

Mr. Andersen: I move that be stricken. The characterization is a conclusion of the witness.

Mr. Banfield: That is correct. Whether they were in need of something makes no difference.

Q. Tell what they did.

A. They offered a shipment of flooring for the westward, finished, lumber.

Q. Do you remember about what size of shipment it was?

A. I don't know. It was one or two carlots, ten or fifteen carryall lots. [192]

Q. After they offered this lumber, what else did they do?

A. Well, at that time I had to phone Seattle to find out if I could get space or if I could accept it. Our superintendent said, "As a public carrier, you can't refuse it."

Mr. Andersen: I object.

The Court: So far as the conversation, it is not material.

Q. Mr Adams, just tell us whether or not you agreed to accept it?

A. He said as a common carrier we had to accept it

Mr. Andersen: I move that be stricken, may it please the Court, as hearsay.

The Court: I don't know whether he said that or as a common carrier——

A. Your Honor, my instructions over the phone were that.

(Testimony of Horace O. Adams.)

Mr. Andersen: I move that be stricken as hearsay. That is hearsay.

The Court: Objection overruled.

Q. State the instructions.

A. My instructions were that as a common carrier we had to accept shipments on the dock.

Mr. Andersen: Again I move that be stricken.

The Court: Motion denied.

Q. Mr. Adams, tell us what happened to the lumber.

A. They brought the lumber to the dock. It was signed for by [193] Agnes Dobner who worked on the dock as cashier, who didn't work for us. She worked for the Alaska Dock and Storage Company, as our agents.

Q. In other words, that material was for shipment on an Alaska Steamship Company boat?

A. Yes, sir.

Q. Tell us what happened then?

A. The steamer came in at five or six o'clock and was going out that evening.

Mr Andersen: I would like to interpose an objection, another objection similar to my objection to Mr. Hawkins' testimony that this is incompetent, irrelevant and immaterial in so far as the International is concerned.

The Court: You mean—you better identify just what testimony you are referring to.

Mr. Andersen: At the conclusion of Mr. Hawkins' testimony I made a motion to strike on

(Testimony of Horace O. Adams.)

grounds previously discussed—no foundation and it is not binding on the International.

The Court: You are renewing that?

Mr. Andersen: No. So far as this witness' testimony is concerned, I want to move at the proper time, move to strike.

The Court: It may be admitted subject to the ruling.

Q. Go ahead.

A. We discharged the northbound cargo and loaded out the westbound [194] cargo, and I said, "It is time to load the lumber," and the longshoremen wouldn't load it.

Mr Andersen: I am going to move that be stricken as a conclusion of the witness and not a proper foundation.

The Court: He should state what was done or not done rather than what——

A. They didn't load the lumber from the Juneau Spruce for the westward.

Q. Who refused to load the lumber?

A. The longshore boss at the time, I think, was Joe Guy.

Mr. Andersen: I will object to that as not binding upon the International and not binding upon Local 16.

The Court: Objection overruled.

Q. Was Mr. Joe Guy an officer of the Union, do you know?

A. He was the boss at that time.

(Testimony of Horace O. Adams.)

Q. Boss of the crew, you mean? In your dealings with the longshore crews who do you deal with?

A. I deal with whoever is the boss at that time.

Q. That is customary, is it? A. Yes.

Q. And is that the way you operate under your agreement of employment? A. Yes.

Q. Now, what did you say to Mr. Guy?

A. Well, it was getting late. I said, "We are ready to load [195] lumber." He said, "We are not going to load any lumber. It went through a picket line."

Mr. Andersen: I object.

The Court: I think——

Mr. Strayer: Mr. Guy was a member of Local 16, one of the parties. The reason he gave for refusing to load lumber would be admissible as an admission of the party and explaining the act of Local 16 in refusing to load the lumber.

Mr. Andersen: I don't believe any unincorporated association will be held responsible for acts of a member. If a member gave a mistaken order to refuse or to do something, then by a mistaken order they would be held liable for anything he might say or do. These gentlemen understand the foundation that is necessary. They haven't laid a foundation. Mr. Guy is simply a member.

The Court: If he was down there exercising authority, the presumption would be that he had it. The objection is overruled.

(Testimony of Horace O. Adams.)

Q. What happened to this cargo of lumber? Did you answer the question—what did Mr. Guy say?

A. He said they would not load the lumber because it went through the picket line.

Q. What did you do after that?

A. We pulled the gangplank and sailed the ship.

Q. Before you sailed the ship did you have a conversation [196] with Mr. Druxman?

A. Yes.

Q. Was this conversation after the conversation with Mr. Guy?

A. It was after that—with him.

The Court: With whom?

A. Bob Druxman.

Q. The first time you talked to Mr. Guy, you testified it was in the presence of Mr. Buckler?

A. He was first mate.

Q. Was he present when you talked to Guy about this second incident? A. Yes.

Q. Was Mr. Druxman there the first time?

A. No.

Q. Was he present the second time?

A. No.

The Court: I am confused between Buckler and Druxman.

A. Buckler was the first mate, and Druxman was the K.I.N.Y. reporter.

Q. After you talked to Mr. Guy in the presence of Mr. Buckler and before the ship sailed, did you have a conversation with Mr. Druxman?

(Testimony of Horace O. Adams.)

A. Yes.

Q. What was Mr. Druxman's occupation at that time? [197]

A. He was the reporter for K.I.N.Y. I think he was jointly with the "Empire" and K.I.N.Y.

Q. And what did you and Mr. Druxman do, if anything?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial.

Mr. Banfield: It depends upon what he and Mr. Druxman did. If he had another conversation with the longshoremen, it wouldn't be immaterial.

The Court: Objection overruled.

Q. What did you and Mr. Druxman do, Mr. Adams? A. Mr. Druxman asked me——

Mr. Andersen: Just a minute. I am going to move that that be stricken.

The Court: Yes; conversation will be stricken.

A. It is the only way to bring it out.

The Court: Since there is an objection, you can't state what was said. You will have to say what was done.

Q. What did you and Mr. Druxman do, Mr. Adams?

A. To get concrete evidence for the news and the paper that the lumber was refused and not taken, we went——

Mr. Andersen: I object.

Mr. Banfield: We will show the purpose.

The Court: Objection overruled.

(Testimony of Horace O. Adams.)

Q. Go ahead.

A. We went to this Joe Guy, and I said, "Will you load the [198] lumber?" And he said, "No, absolutely not."

Mr. Andersen: The same objection to this also, may it please the Court.

A. He said it anyway. I don't care.

Mr. Andersen: The same objection; incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Q. Was the lumber loaded aboard that boat?

A. No.

Q. What happened to it?

A. It was hauled back to the mill the next day.

Q. Do you remember the date of that, Mr. Adams, or about when it was with relation to the establishment of the picket line down at the mill?

A. I think it was either the day before or the day after the picket line was established, or either that day—I don't know. I wrote some letters, Mr. Banfield. It was on the date of those letters. They should show when it happened.

Q. Do you have a copy of the letter you wrote?

A. I think so.

The Court: Is the purpose of this to establish the exact date?

Mr. Banfield: Yes, your Honor.

The Court: Is that so very important? He said it was within a day or two of the picket line. Is it absolutely [199] necessary to establish it?

(Testimony of Horace O. Adams.)

Mr. Banfield: I want to establish that that is not the time it was. He has a letter.

A. This letter was written May 6th relative to the "Baranof," Voyage 21, Juneau Spruce Corporation, April 27.

Q. Was the date the 27th or——

A. This is a letter in which I explained what happened. It is kind of a long letter, three pages.

Q. Which sailing of the "Baranof" was it?

A. Voyage 21, April 27th.

Q. Does the 27th mean the date it arrived in Juneau?

A. No. Out of Seattle.

Q. The date it left Seattle? A. Yes.

Q. And how many days later approximately did it arrive in Juneau?

A. Three days later, the 30th.

Mr. Banfield: That is all.

Mr. Andersen: No questions.

(Witness excused.) [200]

HENRY GREEN

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. Will you state your name please?

A. Henry Green.

(Testimony of Henry Green.)

Q. Were you subpoenaed to testify this afternoon? A. I was.

Q. What is your occupation at the present time?

A. Agent for the Alaska Steamship Company.

Q. At Juneau? A. At Juneau.

Q. Tell me what was your occupation during the month of August, 1948?

A. I was agent for the Alaska Steamship Company from about the 6th of August on.

Q. Until the present time?

A. Until the present time.

Q. Now, in connection with your duties did you also have anything to do with managing a dock after August 6th?

A. Yes. Agent for the Ketchikan Wharf Company?

Q. And who was the Ketchikan Wharf Company?

A. It is a dock company operated by the Alaska Steamship Company.

Q. A subsidiary corporation? [201]

A. Yes.

Q. What dock do they operate?

A. It is known as the Alaska Dock in Juneau.

Q. Is that the same dock that was operated just before that in May, 1948, by the Alaska Dock and Storage Company? A. Yes.

Q. That is the dock where the Alaska Steamship boats have landed for years; is that right?

A. That is right.

(Testimony of Henry Green.)

Q. Mr. Green, did you have any requests in August, 1948, from the Juneau Spruce Corporation to ship any lumber by Alaska Steamship boats?

Mr. Andersen: I object to that as hearsay, incompetent, irrelevant and immaterial.

The Court: You can answer that yes or no.

Q. Did you have any such requests?

A. Yes.

Q. What was the request?

Mr. Andersen: I renew the objection.

The Court: Yes; I think that anything calling for conversation would have to be excluded, and it seems to me your purpose might just as well be served by eliminating it. Have him state what was done.

Mr. Banfield: There was nothing done except a particular conversation in this particular case.

The Court: By whom?

Mr. Banfield: Juneau Spruce Corporation and Mr. Green who tried to comply with the request, and the longshoremen who wouldn't permit him to comply with the request, and he reported to the Juneau Spruce. No lumber was moved, or nothing else was done.

The Court: If it is necessary to show what the defendant did, why it might be admissible, but ordinarily that can be shown without bringing out the details of the conversation.

Mr. Banfield: I am afraid, if the Court please —we have to show what the request was, and the longshoremen——

(Testimony of Henry Green.)

The Court: You may proceed.

A. What was the question?

Q. What was the request made by the Juneau Spruce Corporation at that time?

Mr. Andersen: The same objection.

The Court: I have already ruled on it. Go ahead.

A. They requested to ship some lumber either to Seattle or to the westward.

Q. And what did you do pursuant to that request?

A. I informed them that I would be glad to handle their lumber.

Mr. Andersen: I object to all this line of conversation as immaterial and hearsay. [203]

The Court: I still think he could answer that he couldn't do it because the defendant presumably refused and without stating conversation.

Q. Did the Alaska Steamship Company ship this lumber? A. Did the——

Mr. Andersen: I object to any reference of lumber. There is no testimony——

Mr. Banfield: The witness testified the Juneau Spruce Corporation requested——

Mr. Andersen: I thought you had sustained my objection.

The Court: You may answer the question.

Q. Did you ship the lumber on the boat?

A. No.

Q. Why didn't you ship the lumber on the boat?

(Testimony of Henry Green.)

Mr. Andersen: I renew the same objection. It is hearsay, incompetent, irrelevant and immaterial.

The Court: It seems to me it goes to his personal knowledge. Objection overruled.

A. What was the question?

Q. Why didn't you ship the lumber on the boat as requested?

A. Because the longshoremen notified me they would not load it.

Mr. Andersen: I move the answer be stricken also as hearsay, may it please the Court, and no showing has been [204] made in connection with the defendants.

The Court: I think the answer should be followed up by showing who it was.

Mr. Banfield: That is exactly what I can do.

Q. Who was it that told you that they would not ship the lumber?

A. The delegate, Joe Guy.

Q. What was his position with respect to Local 16?

A. You mean, what position did he occupy in the Local?

Q. Yes; or in his dealings with you?

A. At that time he was a member of the Labor Relations Committee of the Union and the delegate and—that is all.

Q. Was he the man you would customarily deal with at that time on such matters? A. Yes.

(Testimony of Henry Green.)

Q. Now, Mr. Green, if this lumber had been shipped, what would the longshoremen have done with it? What would have been their duties?

Mr. Andersen: I object to that as immaterial, may it please the Court.

Mr. Banfield: It is to show, your Honor, what they refused to do.

The Court: I presume they would put it aboard the ship.

Mr. Banfield: That is all he has to say. [205]

Q. What would they do?

A. If it was loaded at our dock, they would have loaded it aboard the ship. At the Spruce Mill they would have handled it if they worked two hatches aboard ship, or the slingmen would have handled it.

Q. If that was your job, who moved it from the warehouse to the face of the dock?

A. The longshoremen.

Q. And who attached the slings?

A. The longshoremen.

Q. And who stowed it in the hold if they worked one hatch? A. The sailors.

Q. And if they worked two hatches?

A. The longshoremen, presumably.

Mr. Andersen: I move that be stricken as purely speculative, may it please the Court.

The Court: Yes; it seems quite speculative and not what has been done or anything of that kind.

Q. Was there any other way this lumber could

(Testimony of Henry Green.)

have been loaded aboard ship except by the use of these longshoremen?

A. That is a hard question for me to answer.

Q. You can explain it as you see fit.

A. Not and comply with the terms of our agreement with the longshoremen.

Mr. Andersen: I move that be stricken as not responsive. The question was—was there any other way to load it? It has nothing to do with contracts.

The Court: Objection overruled.

Q. Did you have a contract with these longshoremen to do that particular type of work?

A. Yes.

Q. Was it in force when this happened August 14, 1948? A. Yes.

Q. I believe it was on or about August 14, 1948; was it?

Mr. Andersen: I move that be stricken. The contract would be the best evidence if it is in force.

The Court: Objection overruled. It is a purely collateral matter. It is to show their method of loading it. A. What was the question?

Q. This incident you spoke about when you contacted Mr. Guy and he refused to load the lumber, when was that?

A. The first part of August.

Q. What year? A. Last year.

Q. Do you remember the words that were used by Joe Guy when you asked him to do this——

(Testimony of Henry Green.)

Mr. Andersen: Same objection.

Q. And he refused?

Mr. Andersen: Same objection, may it please the Court. [207]

The Court: Objection overruled.

A. He said, as a slang term, "No soap," I believe.

Mr. Banfield: That is all. You may cross-examine.

Mr. Andersen: No questions.

(Witness excused.)

(Whereupon Court recessed for ten minutes, reconvened as per recess, with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:)

EUGENE H. CARD

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. State your name please.

A. Eugene H. Card.

Q. Where do you reside?

A. Coos Bay, Oregon.

Q. Do you have any relationship with the Juneau Sprue Corporation? A. I do.

Q. What is that?

A. Labor Relations Adviser.

(Testimony of Eugene H. Card.)

Q. Mr. Card, have you had any occasion to have any meetings as such Labor Relations Adviser with Mr. Hawkins in the [208] presence of a Union committee here in Juneau? A. I have.

Q. Tell me the first such incident.

A. The first meeting was October 23, 1947.

Q. And with whom did you meet and about what time of the day?

A. The meeting was at 2:00 o'clock in the afternoon. Those present were: Mr. Hawkins and myself for the Company; and a Mr. George Ford, a Mr. McCammon and a Mr. Burgo, representing the I.L.W.U.

Mr. Andersen: Local 16, I assume?

Q. Were they representing the International or the Local?

A. I believe they were representing the Local.

Q. And who was the spokesman for the Company at that meeting? A. I was.

Q. And who was the spokesman for the I.L.W.U., Local 16?

A. Mr. Ford was the principal spokesman.

Q. Just tell us what occurred at that meeting and what was said and done.

A. Mr. Ford opened the meeting by stating that they wanted us to sign a contract with the Local. I asked him if they represented any of our employees. He said they didn't; they didn't have anybody working at the plant at the time; but we had to sign a contract with them just the same.

(Testimony of Eugene H. Card.)

I told them we were negotiating with the I.W.A. and recognized the I.W.A. as bargaining agent for all our employees [209] at the plant and couldn't and wouldn't sign a contract with any other union. And Mr. Ford said, "Well, if you don't sign a contract, you will never get that bargeload of lumber unloaded when it gets down to Seattle." They started out the door. Then Mr. McCammon turned around and said, "Wait a minute, fellows." He called the other two back in. He said, "How about paying for those men we sent down here?" I asked him what men he was talking about. He said that they had sent down a couple of men to pile carrier blocks. I told him we hadn't ordered anyone to pile those blocks, that we only paid the men we employed directly and didn't pay men sent by outsiders and, if they were going to be paid, they would have to be paid by the longshoremen if they were the ones that sent them down. He said, "We will see about that," and they left.

Q. Did you have any other meetings that same day? A. Not that same day; no.

Q. Well, that evening did you have any meeting, or the next day, or when was the next meeting with the Union?

A. I didn't have any further meeting with the I.L.W.U.

Q. I mean with any other union?

(Testimony of Eugene H. Card.)

A. Yes; about two days later I had a meeting with the I.W.A. committee.

Q. Who was present at that meeting?

A. Glen Kirkham, Dan Livie, Chris Lee, Tim O'Day and one [210] other committee member from the I.W.A., and Mr. Hawkins and myself from the Company.

Q. You think that would be about October 25th?

A. About that date.

Q. Tell me what was done at that meeting.

A. We discussed the proposed working agreement, and this was the agreement——

Mr. Andersen: We object to this, your Honor, as hearsay, may it please the Court.

The Court: It is the same kind of hearsay that has been going in about all these discussions. Objection overruled.

Q. Go ahead.

A. We discussed the working agreement that I had revised and talked about the meaning of various clauses, and the I.W.A. committee said that they would like to have a little time to study it over a little further, and we said that would be all right, so they took it with them, and a few days later they asked for another meeting.

Q. And who was present at this meeting a few days later?

A. The same committee, the same persons that had been present on the 25th.

Q. And what happened at that meeting?

(Testimony of Eugene H. Card.)

A. We discussed the proposed agreement further and made some changes in the wording of it in a few places, bringing it into conformity with the understanding on both sides, and it was agreed that the contract would be typed up and signed.

Q. Was there any discussion at that meeting regarding the union recognition clause which was later embodied in the agreement of November 3, 1946—1947?

A. At one or the other and perhaps both meetings with the I.W.A. there was discussion on that point; yes.

Q. Tell us what the discussion was.

A. Well——

Mr. Andersen: I assume my objection runs to all of this, your Honor?

The Court: As I see it, since this is a meeting with the I.W.A., it wouldn't appear to be material to bring out the details of the discussion, would it?

Mr. Banfield: If the Court please, only for the purpose of showing what was intended under this agreement, and later to show how it operates.

The Court: I think he can state what was intended by the agreement without relating the discussion.

Mr. Banfield: Very well.

Q. Tell us what was agreed regarding the union recognition clause.

A. It was agreed the union recognition clause would cover all employees of the Company regard-

(Testimony of Eugene H. Carl.)

less of what work they were [212] doing, with the exception of those named as being specifically excluded.

Q. Was there mention made or an agreement made as to whether or not this clause covered the barge loading which has been testified was going on on October 23rd?

A. Yes, it was. It was understood by the two committees, the I.W.A. committee and the Company committee, that barge loading was included as all other work in the plant.

Mr. Andersen: I renew my objection. It is his understanding. It is hearsay.

The Court: It isn't his understanding. The witness is testifying to what they interpreted or what interpretation they agreed on that that clause should receive. The motion is denied.

Q. Was any understanding or agreement reached with the approval of the I.W.A. International?

Mr. Andersen: Same objection.

A. There was.

Q. And what was the agreement in that respect?

The Court: Well, how could they bind the International by their agreement?

Mr. Banfield: If the Court please, they couldn't. The only question was whether or not they had consulted with their International and were doing it in accordance with their policy. [213]

The Court: I thought you meant the Longshoremen's International.

(Testimony of Eugene H. Card.)

Mr. Banfield: Oh, no. The I.W.A. International.

The Court: You may answer.

A. Will you read the question please?

Court Reporter: "And what was the agreement in that respect?"

A. Well, the agreement was that the recognition clause, that the barge loading was covered in the recognition clause, as well as all the other work, with the knowledge and the understanding of the I.W.A. International Office.

Q. It was done with their approval?

A. Yes.

Q. Now, when was this agreement actually typed up?

A. Between about the 29th of October when we had our last negotiating meeting and the 3rd of November when the agreement was signed.

Q. Do you remember, Mr. Card, when Mr. Hawkins left town about that time?

A. He left right after our last meeting with the I.W.A., about the 29th or 30th; I think about the 30th of October.

Q. Did he leave any instructions about signing this agreement? A. He did.

Q. What were they?

A. My instructions were to sign the agreement in his name. [214]

Q. And was that done? A. It was.

Q. On what date?

A. November 3, 1947.

(Testimony of Eugene H. Card.)

Q. After that what did you do, Mr. Card?

A. I went back to Coos Bay.

Q. And when did you come back to Juneau again? A. April 13, 1948.

Q. And would you tell us what the conditions were at the plant at that time?

A. There was an I.L.W.U. picket line at the plant, and the mill was not in operation.

Q. Have you any idea how many men were working there at that time?

A. How many men were actually working?

Q. Yes. A. At the plant?

Q. And in the office and so forth; what classification of men were there?

A. Well, on the 13th I think there were only watchmen and office employees working at that time.

Q. Now, do you know the policy of the Juneau Spruce Corporation with respect to hiring longshoremen? A. I do.

Q. What is that policy? [215]

A. It is to hire them as well as anyone else if they apply for work in the mill and there is work that they can handle.

Q. And if they should apply for work and work there in the mill, who would be their bargaining representative? A. I.W.A.

Q. Could they bargain individually with the employer?

A. No. They don't bargain individually down there.

(Testimony of Eugene H. Card.)

Q. Could the employee come in and ask for a raise—that is all I want to know?

A. No. The I.W.A. is the collective bargaining agent.

Q. I am not speaking of collective bargaining, but, if a man individually would like a raise in pay can he come in and ask the boss for a raise?

A. No. The Union is his bargaining agent.

Q. Would the Union bargain for all of them?

A. Yes.

Q. Does the Company have any objection to the longshoremen attending the slings, attaching the slings, of commercial vessels which are loading lumber to be shipped from the Company's dock?

Mr. Anderson: I think I will object to this line of questioning. It is purely cumulative. They have gone over the same matters. It is just cumulative.

The Court: I have lost the form of the question. In view of the objection, will you read the question?

Court Reporter: "Does the Company have any objection to the longshoremen attending the slings, attaching the slings, of commercial vessels which are loading lumber to be shipped from the Company's dock?"

The Court: Objection overruled.

A. No. We have never objected because we have nothing to do with it.

Q. Does the Company hire those men?

A. No.

(Testimony of Eugene H. Card.)

Q. What is the Company's objection to hiring longshoremen to load barges?

Mr. Andersen: The same objection, may it please the Court. It is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

A. Because we have an agreement with another union under which that work is covered. We can't break our agreement with the I.W.A. and take the work away from them and give it to somebody else just because they come along and ask for it.

Q. Mr. Card, April 13th when you arrived here were the I.W.A. willing to allow the longshoremen to do this work?

A. I think there might be some question about that.

Q. Well, what do you know of your own knowledge as to whether they did, or how would you qualify it? [217]

A. I talked to Mr. Peterson, who was then the Vice President of the I.W.A., and to Mr. Gustafson, who was then Secretary of the I.W.A., and they told me——

Mr. Andersen: Just a moment. I am going to object to that as hearsay, may it please the Court.

The Court: I think that conversation should be eliminated as far as possible.

Q. What was the position of the I.W.A., or factions of it if there was more than one position? Just tell us what the facts were.

(Testimony of Eugene H. Card.)

Mr. Andersen: That calls for an opinion of the witness, may it please the Court.

The Court: Objection overruled.

A. I was told that——

Mr. Andersen: This is hearsay, may it please the Court.

The Court: Just eliminate conversation as far as you can and state what the decision was or what the outcome of the discussion was, or something of that sort, rather than to relate the details of the conversation.

A. The decision, as I understand the situation, your Honor, the decision was that there was apparently an agreement between the longshoremen and the Mill Company.

Q. Which mill company?

A. The Juneau Spruce Corporation. And the I.W.A. was willing [218] to give up that work in view of what they understood was this agreement between the longshoremen and the mill, the Juneau Spruce Corporation.

Q. How did they claim this agreement had come into effect?

Mr. Andersen: The same objection. It is hearsay and calling for a conclusion and opinion of the witness.

The Court: You might ask him to what agreement they referred.

Q. To what agreement did they refer?

(Testimony of Eugene H. Card.)

A. The I.W.A. men were referring to a supposed agreement they were told by the longshoremen was in effect.

Q. Between whom?

A. Between I.L.W.U. 16 and the Juneau Spruce Corporation.

Q. How did that supposed contract come into effect with the Juneau Spruce Corporation.

A. That I couldn't answer. There wasn't any such contract, and I couldn't tell you how it came into effect; there wasn't any.

Mr. Andersen: I object to that as a conclusion and opinion of the witness. I think it is going deep into the hearsay field.

The Court: He merely answered that he docsn't know how the idea gained ground that there was such a contract.

Mr. Banfield: I don't believe that is what he answered, your Honor. [219]

Q. Did they tell you how this contract was supposed to have come into effect between the Juneau Spruce Corporation and the I.L.W.U.?

A. No. They just understood that there was such a contract. They had been told by the longshoremen that there was such a contract.

Q. Did you tell them that there wasn't?

A. I certainly did.

Q. Did you know at that time what particular contract they were referring to? A. No.

Q. Now, were there any other reasons why the

(Testimony of Eugene H. Card.)

Juneau Spruce Corporation was not willing to make an agreement with the I.L.W.U.?

Mr. Andersen: I object to that as immaterial, may it please the Court.

The Court: Objection overruled.

Mr. Andersen: And calling for a conclusion and opinion of the witness.

A. Well, yes. You can't just go around and make contracts with anybody that comes along. We had a contract with a union that covered all our employees.

Q. Did you have any objection to making two contracts, with two organizations?

A. Yes, of course. [220]

Q. What were the reasons for it?

A. You can't take work away from one group of men and give it to somebody else.

Mr. Andersen: I object to that as a conclusion and opinion of the witness.

The Court: Motion denied.

Q. If you took the work away—did it make any difference to you who did the work? Who did you want to do the work?

Mr. Andersen: That is a complex question.

Q. Did it make any difference to the company?

A. It made a difference in this respect; yes. We couldn't permit the I.W.A. to violate their agreement any more than they would permit us to violate ours.

Q. Of course people can call off an agreement if they want to? A. Yes.

(Testimony of Eugene H. Card.)

Mr. Andersen: I object.

Q. Why were you unwilling to void the agreement with the I.W.A. and draw up another excluding barge work?

A. If we had let the agreement go then and sign with the longshoremen, the next day some other union would be down and say, "We want an agreement covering machinists," or, "We want an agreement covering painters," or, "We want an agreement covering carpenters." We weren't just going to open road to everyone in the Territory coming in and covering [221] small groups of people.

Q. Was there any other reason you can think of now? A. None that I know of; no.

Q. Do you know, Mr. Card, how long the mill was closed down?

A. It was closed from the 10th of April to the 19th of July.

Q. And during that time was there any logs sawed for production of lumber?

A. Not up to the 19th of July; no.

Q. Did any of the I.W.A. men to your knowledge participate in the picket line?

A. Not to my knowledge.

Q. Have there been any longshoremen or members of Local 16 working for the corporation after October 23, 1947?

A. Not as long as to my knowledge.

Q. Could there have been some working in the mill just as general mill hands?

(Testimony of Eugene H. Card.)

A. There could have been.

Q. Mr. Card, was there any loading of barges with lumber for shipment to the United States after the picket line was established?

A. I don't recall any being loaded after the picket line was established.

Q. How long were you here after April 13th?

A. Until the 20th of May.

Q. Was there a barge being loaded at the time you arrived [222] here on April 13th?

A. It had just been loaded and, I believe, left here that day.

Q. The same day you arrived?

A. No. I think it left here the morning the picket line was put on the plant.

Q. Mr. Card, does the Juneau Spruce Corporation maintain any office in Portland?

A. Not to my knowledge.

Q. Do you know the President of the Corporation? A. Yes.

Q. What is his name? A. H. F. Chaney.

Q. Does he have a private office of his own in Portland? A. Yes, he does.

Q. Is it established just for doing business with the Juneau Spruce Corporation or in connection with other business that he does?

A. It is in connection with other business.

Q. Is that the only office that might be termed an office of the Juneau Spruce Corporation in Portland?

(Testimony of Eugene H. Card.)

A. That is the only one I can conceive of, and I certainly wouldn't call that a Juneau Spruce Corporation office.

Mr. Banfield: I think that is all. [223]

Cross-Examination

By Mr. Roden:

Q. Mr. Card, how long have you been Personnel Officer for the Company?

A. Since about the middle of April, 1947.

Q. And did you occupy a similar position before that?

A. No. There wasn't any Juneau Spruce Corporation.

Q. Not necessarily Juneau Spruce; but any other company? A. Yes.

Q. For how long did you occupy this position?

A. With the other company?

Q. Yes.

A. I have been employed by the Coos Bay Lumber Company since April 1, 1945.

Q. And prior to that time what was your occupation?

A. Oh, between the 1st of March, 1942, and April 1st—it was 1946 I went to work for Coos Bay Lumber Company—between March 1, 1942, and April 1, 1946, I was employed by associations representing employers in the lumber industry in the matter of labor relations.

Q. Have you ever represented any unions?

(Testimony of Eugene H. Card.)

A. I have.

Q. For how long a period of time?

A. From the 8th of June, 1937, to the 28th of February, 1942.

Q. So practically all the time since [224] the passage of the Wagner Act, as it has been called, you have been engaged more or less in labor relations and are pretty well informed about the law as exemplified in the Wagner Act and the Taft-Hartley Act?

A. Yes; I feel I am rather familiar with the law.

Q. You are the gentleman who prepared the contract which was executed on the 3rd of November between the Juneau Spruce Corporation on the one hand and the I.W.A. on the other; that is true?

A. I didn't prepare it all by myself; no.

Q. You scrutinized it in all respects?

A. Yes.

Q. It was submitted to you for careful consideration? A. Yes; that is right.

Q. And you did? A. Yes, sir.

Q. And you did your best to make a good contract? A. Yes, sir.

Q. This recognition clause, so called, where did you get that from?

A. It is the same as in the previous contract the I.W.A. had with the Juneau Lumber Mills.

Q. That is right? A. Yes.

Q. Do you remember the date of that contract, Mr. Card? [225] A. November 3, 1947.

(Testimony of Eugene H. Card.)

Q. I mean the one between the Juneau Lumber Mills and the I.W.A.

A. No, I don't remember the date of that.

Q. That was several years old, wasn't it?

A. I think it was.

Q. So you copied that literally out of that former contract? A. No, sir; I didn't copy it.

Q. What did you do? You adopted it?

A. The clause was in the contract which the I.W.A. presented to us, which in turn was presented to me for consideration, and I made several changes in the contract they had proposed, and it was under the revised contract that we started our negotiations about the 25th of October. I did not change the recognition clause, the wording of it as it had appeared in the contract presented by the I.W.A.

Q. But you say it was the understanding between the Corporation, the Spruce Corporation, and the I.W.A. people that the contract should cover everybody employed by the Juneau Spruce Corporation except those particularly excepted, the superintendent, foremen and office force.

A. All those at the Juneau plant; that is right.

Q. Why did you say this in this recognition clause—and it shall be "recognized as the sole and exclusive collective bargaining agent," that is the Union shall be, "for all [226] the employees of the Employer," and then you keep on. First of all you say, shall be "the exclusive collective bargaining agent for all the employees of the Employer"?

(Testimony of Eugene H. Card.)

A. That is right; all the employees.

Q. And then you go and say in which departments, namely, in the sawmill, in the manufacturing and in the retail departments. If it covered all of the employees, why say it is to cover those in these three departments, and no others?

A. Those were the general divisions of the operation down there, Mr. Roden, and, as the I.W.A. committee explained it to us, they wanted to be sure they got in all the general departments of the general outline of the divisions of the plant so there would be no misunderstanding.

Q. But it says "all employees." It meant all of them, didn't it? A. Yes.

Q. It didn't need any further definition; is that right?

A. Well, that may have been. I don't know what their particular reason was for wanting those three words in there. It didn't make any difference. It didn't do any harm.

Q. Wasn't this the reason—because it was that way in the contract which they had with Rutherford?

A. They never said so. If that was the reason, I am sure I couldn't tell you. [227]

Q. At the time there was considerable talk about as to who should load the barges, isn't that right?

A. There was. I brought that up myself.

Q. As a matter of fact, that was about the last thing to be agreed upon before the contract was

(Testimony of Eugene H. Card.)

signed. You say it was mentioned and you understood that the barge loading was to be done by the sawmill workers; is that correct?

A. That is correct.

Q. Why wasn't that put in the contract if it was of such tremendous importance?

A. The contract, the recognition clause, already covered all work at the plant, Mr. Roden, and it was unnecessary and it is not the way these contracts are drawn up, to write in the one specific job classification and leave the others out. The wording of that recognition clause covered barge loading as well as other work at the plant, except odd-job classifications, which were excluded. It was unnecessary to write it in specifically. It included barge loading.

Q. That is your estimation of it, isn't it?

A. Yes, surely.

Q. But that wasn't the explanation the longshoremen gave, was it?

A. They didn't have anything to say; they weren't involved.

Q. Which Peterson, the Secretary of the I.W.A., and Gustafson, another member of their committee, put on it when they talked to you later on, was it? Just say yes or no, that was not the interpretation which they put upon it?

A. Mr. Peterson and Mr. Gustafson were not present at the negotiation.

Q. When they talked to you, they were members of the I.W.A. when they talked to you in April?

(Testimony of Eugene H. Card.)

A. They didn't talk about that. I already testified to [228] what they said.

Q. What did they say?

A. They said they understood the longshoremen had a contract with the Juneau Spruce Corporation and they were willing to give up the work in view of that contract.

Q. Didn't they tell you when you had the hearing over here before the Mayor sometime in May, 1948, that the loading of all water-borne transportation was the longshoremen's work, according to the interpretation of their contract?

A. I wasn't present when Mr. Peterson and Mr. Gustafson testified before the Mayor's committee. If they testified, they didn't tell me.

Q. You weren't there?

A. I was only there at the time I testified myself.

Q. When the longshoremen's committee, together with the committee from the I.W.A., came to see you and Mr. Hawkins, they also told you, that is, the representatives of the I.W.A. told you, that in their opinion the loading of the barges belonged to the longshoremen. Isn't that true?

A. You are confused, sir. I never attended any joint meeting of the I.W.A. and the I.L.W.U.

Q. Isn't it a fact that the I.W.A. had at least two meetings, at both of which they passed a resolution saying that the loading of water-borne transportation here mentioned [229] was work of the longshoremen?

(Testimony of Eugene H. Card.)

A. I am not an I.W.A. member. I didn't attend their meetings.

Q. You never heard?

A. If you are asking for hearsay——

Q. Never mind. You were advised what went on prior to the picket lines being put up?

A. Not having been present——

Q. You had been told?

A. Not having been present, I can't say exactly.

Q. You want to tell the jury, and the Court, that you didn't keep yourself informed of the meetings of the I.W.A. with reference to the picket line? Is that what you want us to understand?

A. I don't know everything that took place.

Q. I didn't ask that. I am asking you if you want the Court and jury to understand now that you don't know what transpired at the meetings that the I.W.A. held a day or two before the picket line——

A. I would like the Court and jury both to understand that I don't know everything that took place.

Q. You are not answering.

A. I am trying to. If I understand or am wrong, and I am trying to understand, I wish to answer truthfully and honestly any questions. If you would like to repeat [230] your question, I will——

Q. Do you want us to understand, I will take that back. Do you know that there were meetings held here a day or two before the picket lines were established, don't you?

(Testimony of Eugene H. Card.)

A. I have been told there were.

Q. And you have been told what transpired at those meetings as far as the position the longshoremen took and the position the woodworkers took. Haven't you been informed of that?

A. I heard the testimony at the N.L.R.B. hearing last September; yes.

Mr. Roden: That is all.

Cross-Examination

By Mr. Andersen:

Q. Mr. Card, you entered into a contract with the I.W.A. on what date?

A. The contract was signed November 3, 1947.

Q. And, as I understand it, you negotiated that contract between October 23 and November 3. Is that correct?

A. The final meetings were held at that time; yes, sir.

Q. The final meetings were held when?

A. Between October 23 and November 3.

Q. In other words, there were differences between all of you and no formal contract was entered into until the [231] differences were adjusted on November 3. Is that correct?

A. That is right, sir.

Q. When the longshoremen called on you on October 23, then there was no contract between you and the I.W.A., was there?

A. No signed agreement, that is right.

(Testimony of Eugene H. Card.)

Q. There was no contract between you on that date, was there? A. No signed contract; no.

Q. Will you answer that question. There was no contract between you on that date, was there?

The Court: As to whether it was signed or not?

Mr. Strayer: That calls for conclusions. I don't know if the witness can say if the parties were legally bound.

Mr. Andersen: I will withdraw that question.

Q. As you stated, November 3 was the final meeting. You straightened out the difficulties on October 23, the meeting of the 25th and 29th, and at the meeting of the 3rd the difficulties were adjusted and the contract signed? A. Yes.

Q. On October 23 you told the longshoremen that you had a contract with the I.W.A.?

A. I don't believe I testified I did. [232]

Q. Did you tell the I.W.A. representatives on October 23 that you wouldn't hire longshoremen because you had a contract with the I.W.A.?

A. I don't believe so.

Q. You made no such statement?

A. No, sir.

Q. You met with the committee of the I.L.W.U. on the 23rd? A. That is right.

Q. You told them you wouldn't enter into a contract, didn't you? A. That is right.

Q. Did you tell them the reason you wouldn't sign a contract with them on that date?

A. Yes.

(Testimony of Eugene H. Card.)

Q. What was the reason you gave?

A. That we recognized the I.W.A. as bargaining agent for the employees at the plant and the I.L.W.U. did not represent any employees and was not entitled to a contract.

Q. Is that the only reason you gave them?

A. That is all.

Q. That is all you said on that subject, is that right? A. That was sufficient.

Q. I understand that was the meeting with Mr. Ford of the I.L.W.U., Mr. McCammon and Burgo?

A. Yes.

Q. You were present? A. Yes.

Q. And Mr. Hawkins was present?

A. That is right.

Q. Subsequently did you have a conversation or conference with the I.L.W.U representatives here in Juneau?

A. Not until sometime in the latter part of April, I think around the 20th or 25th of April of 1948.

Q. Did they ask you at that time to sign a contract with them? A. Yes.

Q. At that time you said you wouldn't sign a contract with the I.L.W.U. because you had a contract with the I.W.A., is that correct?

A. I believe that is right.

Q. And as I understand it, your position with the company is to sort of look out for their labor relations? A. That is right.

Q. Your job, as I assume, is to so shape the

(Testimony of Eugene H. Card.)

policy of the company that labor difficulties will be avoided if possible? A. If possible; yes, sir.

Q. It is not the policy of your company to foment any labor disturbances, is it?

A. Definitely not. [234]

Q. I assume part of your job is to cut and fit—you testified that adjustments were made when possible—to the end that there will be no cessation of labor at your plant. Is that true?

A. Not entirely. It is not my job to do something wrong,

Q. That is inherent in what I said, sir, but I mean within the area of reasonable judgment and reasonable policies. It is then your job to cut and fit to the end that there will be no cessation of labor and your plant will operate. Is that true?

A. Well, it is never the desire of the company to have labor difficulties, naturally.

Q. Your job is to try to avoid them, is that right?

A. If possible.

Q. And go to all reasonable extents to prevent them? A. Within the law.

Q. Within the law and within reason, is that correct?

A. No one ever gave me definitely those instructions. It might be.

Q. Don't I fairly state your office?

A. I expect that is the work of most any labor relations man.

Q. Between November 3 of 1947 and April 13 of 1948, were you here in Juneau?

(Testimony of Eugene H. Card.)

A. I left here, I think it was the 6th of November, 1947, [235] and didn't come back until April 13.

Q. You came back when there was this trouble at the mill, and you came back, I assume, for the purpose of trying to adjust any difficulties that were there?

A. I came back to see what the situation was to see what should be done about it.

Q. And if possible, so far as you were concerned, and consistent with your office of personnel management and labor relations advisor, to take such steps and advise the company in the operation of the mill?

A. That might be a little far-fetched to assume. I came back to see what could be done.

Q. Within reason, to get the mill operating again?

A. I always try to be reasonable. I don't know.

Q. Some people have more difficulty in being reasonable than others.

A. I found that out, sir.

Q. You came back as the reasonable person to see what to do about ironing out the trouble?

A. I came back at the request of Mr. Hawkins.

Q. To assist in trying to get things going again?

A. If possible.

Q. All right. When you came back you learned that the I.W.A. was ready to turn all this work over to the I.L.W.U., didn't you? [236]

A. Now you have got me on the spot. If I an-

(Testimony of Eugene H. Card.)

swer that question you would say it is hearsay. I was told by Mr. Hawkins at that time that they were willing.

The Court: If he asks for hearsay you can give it to him.

A. Very well, sir.

Q. I think I know the rules of evidence and it is cross-examination. I can do it. You were told by the I.W.A. Union that the I.W.A. Union was perfectly willing to turn the work over to the I.L.W.U., isn't that true?

A. Yes, I think you could put it in those words, to that effect; yes.

Q. As I understand your testimony, you wouldn't turn the work over to the I.L.W.U. because you had a contract with the I.W.A. Is that correct?

A. It certainly is.

Q. And I assume you told the I.L.W.U. that, in substance, to wit, that you wouldn't sign a contract with the I.L.W.U. regarding this longshore work from the bull rail out, because you had a contract with the I.W.A. Is that substantially correct, sir?

A. You are referring to the meeting in April?

Q. Whenever it was—your conversation with the I.L.W.U.

A. The only one I had after I came back here was in the office of the Territorial Commissioner of Labor, and [237] Mr. Evans was representing the Commissioner of Labor, and he——

Q. Regardless of the time, sir, I am only con-

(Testimony of Eugene H. Card.)

cerned with this: did you tell the I.L.W.U. that you wouldn't turn the work over to them because you had a contract with the I.W.A.?

A. I did, sir.

Q. That was sometime in May or April, was it?

A. Yes; in April.

Q. Now, I assume you understood at this time—you stated you are familiar with the Wagner Act—that under that law you could hire anybody you wished, whether he belonged to the Union or not, you understood that?

A. I wouldn't put it that way, sir.

Q. You wouldn't put it that way? A. No.

Q. That isn't the way you interpret the Taft-Hartley Act? A. It is now; yes.

Q. Did you understand that under the Taft-Hartley Act that you could hire anybody you wanted, regardless of if he belong to a union or not?

A. It depends on what kind of a contract——

Q. Will you answer the question?

A. Will you repeat the question?

Q. Did you understand that under the Taft-Hartley Act that [238] you could hire men to work for you in that mill, whether or not they belonged to a union? A. Surely I do.

The Court: Your question was in the past tense and his answer was in the present. I don't know whether he had knowledge at that time or the present time.

Q. Let's say October 23, let's put it October 23,

(Testimony of Eugene H. Card.)

1947, ten days or so before the contract was signed, you knew at that time—did you know that you could hire men to work in that mill whether or not they belonged to a union, you knew that, didn't you?

A. I knew I could hire men to work in the mill regardless of union affiliation. Does that answer your question?

Q. Yes, that answers it very satisfactorily. Had you written any letters, for instance—strike that. Had you told Mr. Hawkins that, as the corporation's labor relations adviser, they could hire whomsoever they wished, irrespective of whether they belonged to a trade union? A. Surely I did.

Q. When did you so advise him?

A. Oh, that was——

Q. Before the sale was made from the Juneau Lumber to the Juneau Spruce?

A. No; it was along in July or August.

Q. Of 1947? [239]

A. Sometime when he was down to the States.

Q. In 1947? A. Yes, sir.

Q. You, of course, knew that he was Vice President of the Company and General Manager up here?

A. Yes, sir.

Q. All right. And when the longshoremen spoke to you they asked for the work that longshoremen traditionally do, didn't they?

A. I don't know why they asked for it. They simply asked us to sign a contract.

Q. Did they say they wanted to do that work,

(Testimony of Eugene H. Card.)

they wanted to do what is usually referred to as longshoremen's work?

A. I have repeated the conversation that took place just as nearly as I can. I can't recall it word for word a year and a half later. I am sure they didn't say anything about "tradionally longshore work." Mr. Ford merely said he wanted us to——

Q. To buy popcorn, or to do longshore work?

A. You will have to ask him.

Q. Didn't your ask them what they were there for, what work they wanted to do? A. No.

Q. In other words, these men came to talk to you, and you didn't know if it was a contract to sell popcorn or do [240] longshore work?

A. He said they wanted us to sign a contract with the Longshore Local. I asked if they represented any of the plant and he said "No," and I said we would not, could not sign a contract with his union.

Q. You knew at that time, didn't you, Mr. Card, that the men were hired by the Juneau Lumber as well as the Juneau Spruce when it was necessary to do longshore work, and they were not regularly on the pay roll; you knew that?

A. I didn't know the Juneau Lumber Mills ever hired men for longshore work such as you refer to.

Q. Did you make any inquiries as to the past practice? A. I did not.

Q. Did you ever read the contract that had been in effect between the Juneau Lumber and the Juneau longshoremen?

(Testimony of Eugene H. Card.)

A. I have never seen it, if one exists.

Q. Was it ever explained to you? A. No.

Q. As labor relations adviser for Juneau Spruce, do you know or were you consulted by them before they took over from the Juneau Lumber?

A. I was.

Q. Did you ask what contracts were in effect?

A. Yes.

Q. Labor relations contracts? [241]

A. I asked if there were any labor contracts.

Q. Of whom did you make that inquiry?

A. Mr. Dashney.

Q. Who is Mr. Dashney?

A. Auditor of the Coos Bay Lumber Company and the man who came up to make the purchase agreement.

Q. Did you ask if they had any longshoremen regularly in their employ? A. No.

Q. Weren't you concerned with it? A. No.

Q. As labor relations man advising a large corporation, weren't you interested in ascertaining their policy, whether or not longshoremen were hired?

A. I knew nothing of the so-called policy of hiring longshoremen.

Q. We will say "intermittently" to do longshore work there? A. No.

Q. You made no inquiry at all? Haven't you had any interest?

A. Surely, I had an interest in anything involv-

(Testimony of Eugene H. Card.)

ing labor relations. I asked Mr. Dashney when he asked me to advise him as to how this purchase should be handled from the labor end of it, I asked if there were any union agreements in effect to his knowledge.

Q. How many were youl told there were, [242] if any? A. One.

Q. By the way, how long have you been with the Coos Bay Lumber Company?

A. Since April 1, 1946.

Q. You have had a lot of experience around lumber mills, I assume?

A. Since September, 1921.

Q. You knew in this operation here that longshoremen would be employed from time to time?

A. No, I didn't.

Q. You had no knowledge of that? A. No.

Q. You made no inquiries at all as labor relations man?

Mr. Banfield: What date? At the time he arrived, or the Company took over, or what?

Mr. Andersen: I think the witness understands me.

Mr. Banfield: I don't understand you and should like to know.

Q. Do you understand me, sir?

A. Are you talking about——

Q. At the date of the change-over from the Juneau Lumber to the Juneau Spruce?

A. I asked if there were any labor contracts. I

(Testimony of Eugene H. Card.)

was told there was one. That was all the interest I had.

Q. That one was with whom? [243]

A. I.W.A. M-271.

Q. Weren't you told there was a contract between the Juneau Lumber and the Longshore Union here? A. I was not.

Q. Did you make any inquiry as to whether longshoremen were used in that operation? A. No.

Q. Did you make any inquiry as to what labor was employed from time to time?

A. I never talked to the employees of the Juneau Lumber Mills about anything.

Q. Getting down to the picketing there and so forth, as I understand it, when it came on, on the 13th, the mill was closed? A. Yes, it was.

Q. And you, of course, came up for that purpose; you didn't come up for the trip, did you?

A. I came up at the request of Mr. Hawkins.

Q. To try to iron this thing out if you could?

A. Yes.

Q. Did you, with respect to the amount of longshore work that was done here, did you make any inquiries as to what percentage of the longshore work was done in relation to the total labor or payroll of the company? Did you make any inquiry?

A. No.

Q. Didn't you try to determine whether the longshore operation was a major portion of the labor expense, or whether it was a minute portion of the

(Testimony of Eugene H. Card.)

labor expense of the Company? A. No.

Q. You weren't interested in that?

A. No, sir.

Q. Did you inquire into what would be the average monthly money expended by the Company for longshore work?

A. It would be pretty hard to say what was spent when they didn't spend any.

Q. I asked, did you inquire?

A. I didn't inquire.

Q. Did you ask anybody in the Company or the Longshore Local about how many men there were on the average for the Company, directly or indirectly, for other people, as has been testified, over, say a period of six months? A. No, sir.

Q. You weren't interested in those figures?

A. No.

Q. Whether they were great or large?

A. I was only interested in whether they had the right to try to force us to hire them.

Q. You weren't interested in whether the Company closed down, [245] you say?

A. I said——

Mr. Andersen: Somebody is mistaken. Will you read the witness's answer? A. It could be you.

Q. I said "somebody is mistaken." I have been mistaken many times.

Court Reporter: "I was only interested in whether they had the right to try to force us to hire them."

(Testimony of Eugene H. Card.)

Q. Is that your answer, sir?

A. If that is what I said.

Q. Then you weren't interested at all in whether the mill closed down? A. Yes.

Q. I asked you about employing them and also if you were interested in whether or not the mill closed down?

A. I was interested in the fact that the mill closed down.

Q. And wanted to get it over?

A. If possible; yes, sir.

Q. Now on the technique of labor relations, tell me what facts are usually considered as most important.

A. Personally, I consider the first factor staying within the law, advising my Company properly within the law.

Q. What law do you refer to, if any?

A. Of course, that takes in all Federal laws.

Q. You don't advise people regarding the law?

A. No.

Q. You are not lawyer?

A. No; thank goodness.

Q. Do you advise regarding labor law?

A. Yes.

Q. What law do you have in mind?

A. The National Labor-Management Relations Act; the Fair Labor Standard Act, as it might apply. Those are the principal laws affecting labor relations.

(Testimony of Eugene H. Card.)

Q. The Fair Labor Standards Act is not involved here. A. No.

Q. Do you concede any laws are involved in this dispute?

The Court: We are wandering far afield. We are not interested in the conception of this witness of the law.

Mr. Andersen: You might be right, your Honor.

Q. Tell me the proper technique of advising people in this sort of a situation.

A. I also try very hard to get along with people employed by the Company, in other words, I feel it is my job to sit down and talk things over and keep things straightened out.

Q. Amicably? A. Yes.

Q. What else?

A. Principally, not to give away too much from the Company's [247] standpoint and not to be unfair to the people on the other side and at the same time try to balance the scales between the two. Primarily, I am employed by the Company.

Q. Does that complete it?

A. I think that will cover the main objectives; yes, sir.

Q. Do I understand it was you who advised the Company not to enter into contractual relations with the longshoremen? A. Yes, that is right.

Q. When did you advise them that, sir?

A. Starting October 23, 1947.

Q. October 23 of 1947? A. Yes, sir.

(Testimony of Eugene H. Card.)

Q. At that time and when you were in that meeting with Mr. Hawkins or any time after that, did you ever ask Mr. Hawkins how many longshoremen or how much money would be involved in so far as the Company was concerned, if they signed that contract with the longshoremen and if it didn't make any difference with the I.W.A.? Did you ask any question like that?

A. It was discussed to some extent; yes.

Q. Did he tell you how much the payroll would be, or how many longshoremen?

A. What longshore work are you talking about?

Q. Longshore work done at the expense of the Company, absorbed [248] by the Company, done by men employed by the Company, rebilled to commercial steamships—either, both, or separately, I don't care.

A. Of course. I am not trying to evade your questions. I will try to give this as clear as I can. The loading of commercial steamships—we have nothing to do with that.

Q. That is true.

A. There were some cannery tenders that were loaded by the longshoremen. These men were paid by the Company and charged on the invoice to the people who bought the boxes or the lumber. They probably amounted to several hundred dollars between the first of May and the 23rd of October of 1947, then, of course, that was all the longshore work that had been done.

(Testimony of Eugene H. Card.)

Q. You would say, in a year's period, if that is the criterion, perhaps there wouldn't be $3,000 of longshore work by the Company and the cost assumed by them, is that correct?

A. Cost assumed by the Company?

Q. Yes.

A. It would be kind of hard to figure out. We didn't know how much——

Q. Do you think it would go as high as $10,000?

A. I doubt it very much.

Q. You doubt it would be as much as $10,000?

A. I doubt it.

Q. As a matter of fact, you don't believe it would be $5,000?

A. Between $5,000 and $10,000, if you are talking about barge loading.

Q. We will take that figure. What is the total payroll? You have roughly 220 employees at Juneau, better than 50 in the sawmills someplace else and lumber yards in Ketchikan on the payrolls, the office force, President's salary; what is the total payroll?

A. You would have to ask somebody else.

Q. Don't you know the total? Aren't you the Personnel Director?

A. I am not the Personnel Director of the Juneau Spruce Corporation.

Q. Have you any idea of the total yearly payroll of the Company?

A. I understand that at the time they were in

(Testimony of Eugene H. Card.)

operation it was running somewhat better than $100,000 a month.

Q. $100,000 a month? A. Yes.

Q. And the total payroll of the longshoremen would be between $5,000 and $10,000 a year, is that correct? You have just testified, of course, that is only representative. A. Yes.

Q. With those facts in mind, on about the 13th, after you had [250] these facts and figures in mind, on April the 13th, you still advised the Company not to hire any longshoremen?

A. I advised the Company not to sign a contract with the local longshoremen, that is right.

Q. All right, sir.

Mr. Andersen: That is all.

Redirect Examination

By Mr. Banfield:

Q. Mr. Card, you examined over the objection of hearsay, as to what Mr. Peterson and Mr. Gustafson told you when you arrived back here in April, 1948. Just exactly what did they tell you?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial, may it please the Court.

The Court: However, it was gone into on cross-examination. It may be gone into on redirect examination. That is not merely for the purpose of repetition, but to bring out something that was not brought out.

Q. What was the attitude of Mr. Peterson and Mr. Gustafson?

(Testimony of Eugene H. Card.)

Mr. Andersen: I object to that as incompetent and immaterial. He asked what was said.

Q. What did they say?

A. They said jointly, between the two of them—I can't say exactly, but between the two of them, that they were given [251] to understand by the longshoremen who attended their meeting that there was a contract in effect between the Juneau Spruce Corporation and the Longshore Local and that that contract covered the work of loading the barges at the plant, and they felt that they would have to give up that work, which the I.W.A. had been doing, and turn it back to the longshoremen in view of that contract. I told them there was no such contract in effect. We had never signed a contract with the longshoremen and somebody had been kidding them along a little bit, in my opinion.

Q. Did you talk to any other officials of the I.W.A., committee members?

A. Not at that time.

Q. Did you before the mill re-opened July 19?

A. Yes.

Q. What did they say?

Mr. Andersen: To which I object as hearsay, may it please the Court.

The Court: Is this going into something other than——

Mr. Banfield: It is for the purpose, if the Court please, of determining the attitude of the I.W.A. Counsel started in here with testimony as to why

(Testimony of Eugene H. Card.)

the I.W.A. did this and why the I.W.A. did that and "didn't you know what happened at their meetings?" [252]

The Court: I understand all that.

Mr. Banfield: I want to know what the attitude was of the whole Union.

The Court: Is this by a conversation brought out by counsel on cross-examination?

Mr. Banfield: No, he didn't talk about a specific conversation at all. He just said "in conferences with the I.W.A. officials." That is what the subject was.

Mr. Andersen: I don't believe that is a correct statement of the record, may it please the Court.

The Court: All I am trying to do is conform with the rule, where one side brings out discussion or conversation the other may bring out the rest of it, if there is any. If the purpose is to merely bring out something not sufficiently brought out——

Mr. Banfield: If the Court please, I am now talking about also what Mr. Roden brought out, as well as what Mr. Andersen brought out, redirect examination on the whole cross-examination, including who told what in different meetings Mr. Roden pointed out that he was getting at what was the position of the I.W.A. "as told to you by various persons." Now I am trying to find out exactly. I think there is more to be said.

The Court: The Court is not particularly interested in what you are trying to bring out so long as it is within [253] the rule.

(Testimony of Eugene H. Card.)

Mr. Banfield: I am well within the rule, your Honor.

The Court: You may proceed.

A. Where were we?

Q. We were discussing what the I.W.A. men told you at various meetings and what their attitudes were.

A. The first story I got was they had had a couple of meetings when longshoremen's representatives attended their meetings and they didn't know exactly what the score was and were afraid if they didn't give up this work the mill was going to be shut down.

Mr. Andersen: I move this be stricken as hearsay.

The Court: Objection overruled.

Mr. Andersen: I would like to interpose my other objection to this witness's testimony so far as the International is concerned.

The Court: It is admitted subject to the objection.

Q. Go ahead.

A. The plant was just getting ready to start the season's operation after being down a couple of months. They wanted work and were afraid they would lose the work. They knew they would lose work if the plant were shut down by the picket line and they thought the best thing, if there was going to be work, was to give the work up [254] of loading the barges and avoid any trouble.

(Testimony of Eugene H. Card.)

Q. Go ahead.

A. And they also said that they didn't know just what the situation was. During the winter shut-down the local I.W.A. officers they had prior to the time of the shut-down had left town or something, and they had got through the winter without officers and were just getting started again and didn't even have a President at the time this got started. The two they had, Mr. Peterson and Mr. Gustafson, were uncertain as to what to do so they thought the thing to do was give up the work, knowing there would be a picket line if they didn't and try to keep the mill in operation.

Q. Did they say anything about what effect there would be if they went through a picket line?

Mr. Andersen: I object to that as incompetent, irrelevant, immaterial and no foundation laid, may it please the Court.

The Court: Objection overruled.

A. No, I don't recall them saying anything to me about what might result to them if they went through a picket line.

Q. Was there anything said about their position under the Labor-Management Relations Act, I mean the Taft-Hartley law? Did they discuss that with you? A. No, I don't recall that they ever did.

Mr. Banfield: If the Court please, there is one more subject entirely foreign to anything testified to today. I would like the privilege of recalling him.

The Court: You may.

Mr. Banfield: That is all. You may cross-examine.

Mr. Andersen: No further questions.

(Witness excused.)

The Court: Well, ladies and gentlemen of the jury, remember the admonition heretofore given you to refrain from discussing or talking about this case and from reading newspaper or other accounts of this or connected cases or matters. In other words, remaining aloof from anything that might influence you in this case.

Whereupon the Court adjourned until ten o'clock a.m. May 3, 1949, reconvening as per adjournment with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:

GLEN KIRKHAM

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. Will you state your name please?

A. Glen J. Kirkham.

Q. Mr. Kirkham, have you been in the employ of the Juneau [256] Spruce Corporation.

A. I have.

Q. During what period of time?

A. For the last three years.

(Testimony of Glen Kirkham.)

Q. Have you ever belonged to any unions?

A. Yes; I belonged to the Millworkers' Union.

Q. What is the official name of the local union you belonged to?

A. I can't tell the right name, but I think 207 or something like that.

Q. Is that the International Woodworkers?

A. International Woodworkers.

Q. And is the number M-271?

A. M-271 I believe is the number.

Q. Have you ever been an officer of that Union?

A. I was President of that Union.

Q. During what period of time?

A. In about 1947.

Q. When did you cease to be President?

A. In the fall, I believe, of 1948.

Q. Were you the President of the Union on November 3, 1947? A. Yes.

Q. And how long had you been President of the Union prior to that time?

A. I don't just remember, but it had been close to a year. [257]

Q. Mr. Kirkham, did you as President of the Union in the summer of 1947 have any occasion to meet with representatives of the International Longshoremen's and Warehousemen's Union, Local 16?

A. No, we had no occasions to meet with them. They met with us once but it was just a formal meeting.

Q. Did they request the meeting or did you?

(Testimony of Glen Kirkham.)

A. No; they requested it.

Q. Where was the meeting held?

A. It was held in the C.I.O. Hall.

Q. Do you remember about when that was?

A. Let's see, it was sometime in the fall of the year. I don't just remember just when.

Q. Was it before the contract of November 3, 1947, was signed? A. Yes, it was before that.

Q. And who was present at that meeting?

A. You mean the officers?

Q. Name the persons that were present.

A. That would be pretty hard to do at that particular time. There were quite a few there that night I could name.

Q. Name the I.W.A. men that you can remember.

A. Nels Lee, Vice President; Tim O'Day was Secretary, and I can't think of the other fellow's name that worked on the log boom. He was Secretary-Treasurer. [258]

Q. Were there other members of the I.W.A., that is, general members?

A. Yes, a good many members.

Q. It was a meeting of the Union itself?

A. Yes.

Q. Who was there representing the longshoremen?

A. Mr. McCammon, Mr. Ford—they were the principal talkers. There were others who didn't talk.

(Testimony of Glen Kirkham.)

Q. What transpired at that meeting?

A. At that particular time they asked us to turn the loading of scows and barges over to them. In fact, as Mr. Ford or Mr. Cammon stated—I don't remember which it was—they wanted everything from the time the lumber was set down in the yard until well, from then on to the boats, to the scows.

Q. Did they want to do the work of bringing it up to the bull rail of the dock?

A. Well, he talked of wanting it turned over to them. He said they would do much more for us than what we were getting at the time, if we turned it over.

Q. What did he mean, "turn over"?

A. From where it was set down in our yard, let them handle it from there on to the boats.

Q. And did they want to stow it on the boats and barges too? A. Yes [259]

Q. What did they mean, "give you more than what you were getting"?

A. That wages would be boosted.

Q. Did they imply that would be under their jurisdiction and control? A. I don't know.

Mr. Andersen: Just a minute. I object. It calls for conclusion.

Q. What was the understanding?

Mr. Andersen: I object on the ground that he should state what was said.

The Court: I think before he can say what the

(Testimony of Glen Kirkham.)

understanding was he would have to say what was said. An understanding differs radically from——

Q. What did they say?

A. The only thing he said that I can remember is that if we would turn it over to them that they would see that we would get a higher wage rate and then also it was stated their Union was strong and our Union was weak.

Q. And what was agreed by the I.W.A. Union?

A. Well, at our meeting——

Mr. Andersen: Same objection, may it please the Court. I will object on the ground that the witness should state what was said rather than what was agreed.

Mr. Banfield: If the Court please, a great many men [260] were there. Naturally he couldn't testify everything that was said at the meeting that night.

The Court: If he can state what resulted he can state what it was based on and he ought to state what it was based on. The understanding otherwise, or the statement of the understanding, is challenged as a conclusion.

Q. Mr. Kirkham, what was said with respect to the I.W.A. position in regard to this proposal?

A. You mean after they left?

Q. What was determined, in their presence or after?

A. There was no agreement in their presence. They asked for a vote. We didn't give a vote. We waited until after they left. The boys talked it over

(Testimony of Glen Kirkham.)

for a while and came to the conclusion they couldn't accept the longshoremen's proposition because it, well, it conflicted in our work down there considerably and it was understood that we wouldn't touch a thing that had ship's gear on it.

Q. You agreed that the I.W.A. would not do any work of handling when the tackle was attached to the ship's gear? A. That is right.

Q. If the loading was being done by a commercial steamer, what did you decide to do about it?

A. We decided not to touch commercial steamers.

Q. You mean after it was attached to ship's gear?

A. We would pull the stuff to the bullrail and from there on [261] the longshoremen would take over.

Q. What was the situation with regard to outsiders, as the cannery tenders that would come in for box shooks what was the understanding?

A. On that I don't think we had much understanding, as to box shooks and sometimes they loaded them, it depended—during that time labor was very scarce and there were several times Raatikinen from out here came in and sometimes they loaded and sometimes we loaded.

Q. Was any lumber loaded out on small boats and barges?

A. Company boats, and if someone came in and wanted a small stack of lumber we would. I wasn't President of the Union at that time. Mr. Turner was.

(Testimony of Glen Kirkham.)

Q. That had been the practice for sometime?

A. That had been the practice for some time when I went there.

Q. After this decision by the Union, was that decision conveyed to the longshoremen?

A. Yes; by letter.

Q. By letter? A. By letter.

Q. What work were you willing to have the longshoremen do?

A. We was willing to have them load any ship that came in and that had its own gear on it. We would haul it to the bullrail and they would take over from there.

Q. Mr. Kirkham, were you President of the Union on October [262] 23, 1947?

A. Yes, I believe so.

Q. Did you meet Mr. Card about that time?

A. Yes, along in there sometime.

Q. Tell me when you first met with Mr. Card and where and who was present.

A. The first time I met Mr. Card was in the greenroom down there, and when he came in he just came in and introduced himself and told me who he was and asked for a meeting with our Committee over in the office and we met over there that evening. We were getting up a contract at this time. Our contract was practically all ready only we didn't understand how to write it up and we didn't know how to get it in there and we sent it to the International in Portland to work on. Finally they wrote us one and sent it back up to us.

(Testimony of Glen Kirkham.)

Q. Was the first written draft of the contract or the first written proposal typed out, prepared by you or your Union or Mr. Card or by whom?

A. By our Union, the first one.

Q. You say you had a meeting? A. Yes.

Q. Could that have been about October 25?

A. I can't remember the date; along there sometime.

Q. Did you discuss that contract at that meeting? [263] A. Oh, yes.

Q. What was discussed in particular with regard to the contract?

Mr. Andersen: I object to all this as hearsay.

A. I don't remember.

Q. What was said by Mr. Card and what was said by you?

Mr. Andersen: Same objection.

A. It is pretty hard to remember those things. I haven't seen the contract since, you know.

Q. I hand you here Plaintiff's Exhibit No. 2 which is in evidence as the agreement dated November 3, 1947, and ask you if you recognize that contract.

A. Yes; I remember this one. I remember it well.

Q. Now, Mr. Kirkham, I direct your attention to the Union recognition clause of the contract which is on the first page of the contract and ask you to read that paragraph for your own information.

(Testimony of Glen Kirkham.)

A. Yes; that is what we had put in it.

Q. Now, Mr. Kirkham, was anything said with relation to this paragraph at this meeting of October 25 regarding the work of loading barges?

Mr. Andersen: To which I will object as incompetent, irrelevant and immaterial and hearsay, may it please the Court.

The Court: Objection overruled.

Q. Go ahead and answer. [264]

A. Well, there were, but we couldn't give them any answer at that time because we never made a move without we went through the International down in Oregon, in Portland.

Q. What did they want that you had to refer to the International?

Mr. Andersen: I object as calling for a conclusion of the witness.

The Court: If he knows he may answer.

A. I didn't understand your question.

Q. What did the Company, the Juneau Spruce Corporation, ask for with regard to this paragraph?

A. They didn't ask us for anything on that particular paragraph.

Q. Did they ask you anything about barge loading?

A. Not at that time. This all came up later on. Mr. Card missed that in a way, too, about scows and barges. I told him I could not give any answer until I got word from headquarters below.

Q. What I wanted to know was what Mr. Card

(Testimony of Glen Kirkham.)

said or asked you about the barges and scows?

A. He just asked us if we would load them.

Q. Did you make any inquiry from the International? A. Yes.

Q. What International was that?

A. International headquarters there in Portland. It is the head of [265] our Local here, the International Woodworkers of America.

Q. Did you get an answer back from that office?

A. We did. We wired and got an answer back.

Q. After you got an answer back, what did you inform them?

A. Our answer, we got back——

Mr. Andersen: May I interrupt and ask as to the date of this and for a proper foundation for it?

Q. All right. After you got an answer back, Mr. Kirkham, did you have another meeting with Mr. Card? A. Yes.

Q. Was Mr. Hawkins present? A. Yes.

Q. Was your Committee present? A. Yes.

Q. And where was it?

A. Down in the mill office.

Q. And about how long was this after October 25?

A. I don't remember that. It seems like it was the last day Mr. Card was here.

Q. Was it before the contract was signed?

A. No, I think this came in after the contract was signed. I am not quite sure. It has been quite a long time ago.

(Testimony of Glen Kirkham.)

Q. Do you remember having two meetings with Mr. Card? A. Yes.

Q. And do you remember that they were with your full Committee [266] and do you remember that Mr. Card finally had this agreement typed up for you after everything? A. Yes.

Q. Was this before the typing of the contract or was it afterwards?

A. That was after the typing of the contract, I am quite sure.

Q. Was it after the contract was signed on November 3? A. It seemed like it was after.

Q. How long was it before you got an answer from the International?

A. I believe the following day.

Q. You had the first meeting right after Mr. Card arrived, about October 25? A. Yes.

Q. Did you send the wire right away?

A. No, a few days later.

Q. Then you got an answer back right away?

A. Yes. We had called several meetings at that time over the contract during the time we sent this wire, during the time we were holding these meetings.

Q. Mr. Kirkham, if I showed you copies of those wires, would you recognize them?

A. I presume I would.

Mr. Banfield: If the Court please, it will be just [267] a moment until I get the wires. If the Court please, the copies of the telegrams I have

(Testimony of Glen Kirkham.)

asked for will be produced by another witness I have called for ten-thirty, so I don't have them at this time.

Q. Mr. Kirkham, was it agreed, or tell me this, what did the I.W.A. promise the Company with regard to the loading of these barges?

A. We promised them that we would load them.

Q. Was the agreement made on that basis?

A. A verbal agreement was made on that basis at that time. I can't remember that it was a written agreement at that time, but it was verbal to go ahead and load them after the wire came from headquarters.

Q. Was there any discussion at that time what work——

Mr. Andersen: I move that be stricken. He seems to be trying the case of the Juneau Spruce Corporation vs. the I.W.A. and now counsel has introduced a contract Exhibit 2 and now he is attempting to vary the terms of the contract by parol evidence. I think it is improper and I don't believe he has the right to impeach his other witnesses or the document and I submit it is hearsay and calling for the conclusion and impression of the witness and——

Mr. Banfield: If the Court please, he is assuming something the witness is not going to testify at all. Our purpose in doing this is to show under what conditions and [268] circumstances the contract was made. This is not an adversary proceeding between

(Testimony of Glen Kirkham.)

the I.W.A. and plaintiff in this case. It is an agreement made between two parties and not parties to this suit, not identical parties to this suit. I have the right to show what the contract is and how it operated afterwards.

The Court: Would it show any more if his testimony goes in, anything more than what is already embodied in the contract?

Mr. Banfield: We don't think it would, other than explaining the terms, what is meant in the industry, the phraseology.

Mr. Andersen: The contract speaks for itself, unless there are technical words that require explanation or latent ambiguities, there is no room for explanation or need therefor.

The Court: That is the way it strikes me. Unless you can point to something specific in the contract which you wish to explain or illustrate——

Mr. Strayer: May I say one thing? We think the contract covers work that was talked about, but the defendants claim it did not or it was not intended to cover barge loading. It becomes important to show that both parties intended and interpreted it as barge loading.

The Court: To show how the parties interpreted it? [269]

Mr. Strayer: Yes.

The Court: You may proceed.

Mr. Roden: That can only be shown by actions on the part of the different parties, how they in-

(Testimony of Glen Kirkham.)

terpreted the contract. The interpretation of the contract was completed when it was signed. All negotiations, understanding, talks about it became merged in the contract and there is no reason now why the terms of the contract should be changed. It is not ambiguous. It is fully understood. It is in plain English language. One Union understands as well as the other. The very most that can be claimed now is what they have done under it, but they want to tell you what the contract means.

Mr. Strayer: No distinction can be shown between acts and conversations of the parties. What they said was a verbal act showing the interpretation of the contract.

The Court: I was going to add that since the parties' acts showing their understanding or interpretation of the contract would be competent, then likewise the antecedent interpretations placed on it not by acts but what they said would likewise be competent, I should think. You may proceed.

Q. Mr. Kirkham, do you remember any conversation at the meetings between the I.W.A. and the Juneau Spruce Corporation representatives in October of 1947 as to how this paragraph should be worded and as to what it should include?

Mr. Andersen: May I have a better foundation as to [270] place and persons present, your Honor?

The Court: Yes, I think it should specify those circumstances.

Mr. Banfield: If the Court please, I believe that

(Testimony of Glen Kirkham.)

the witness already testified that the meetings were in the office of the Company and both meetings had the same persons present. I will be glad to go over it again.

Q. Mr. Kirkham, tell us where the first meeting was with the Company?

A. Down in the Company office.

Q. Was there a subsequent meeting?

A. There were.

Q. And where was it?

A. In the office down below, or at the Juneau Spruce.

Q. Who was present at the first meeting representing the Company?

A. Mr. Hawkins, Mr. Card, and it seemed to me like Stan Johnson was there. I am not too sure about that, but it seemed like he were.

Q. Who was present for the Company at the second meeting? A. The same ones.

Q. Who was present for the I.W.A. at the first meeting?

A. There was Nels Lee, Tim O'Day——

The Court: I think all that has been gone into. Counsel's objection was that you didn't fix the time and [271] place of this particular interpretation that you are seeking to bring out that was placed on the contract.

Mr. Andersen: Correct, your Honor. I thought he said it was October 29 he had this discussion. I want to make certain and to learn who was present there.

(Testimony of Glen Kirkham.)

Q. Go ahead and tell who was present at the second meeting.

Mr. Andersen: Is that the meeting of October 29?

Mr. Banfield: The witness said he was not certain of the dates of the meetings, but there were two between October 23 and the date it was signed.

Mr. Andersen: I would like to know if it was at the second meeting.

Mr. Banfield: Yes, that is right.

Q. Did you discuss the paragraph at the first or second meeting or both of them?

A. Both of them.

Q. At the second meeting, what was said regarding the Union recognition clause which in this contract states——

Mr. Andersen: I object. I assume——

Q. "The Union is hereby recognized as the sole and exclusive bargaining agent for all the employees of the Employer in its sawmill, manufacturing and retail departments at Juneau, Alaska."

A. Yes.

Q. What was said at the first meeting and by whom, regarding [272] that provision?

A. On that particular clause, I don't know that there was any particular discussion on it. We was all satisfied with it.

Q. Was there any discussion regarding it at the second meeting?

A. You mean the sole bargaining agent of our Union?

(Testimony of Glen Kirkham.)

Q. Yes. A. No, we were both satisfied.

Q. Was there any discussion at any meeting?

A. At our main meeting up in the Hall.

Mr. Andersen: Just a minute. That is not responsive.

Mr. Banfield: The answer may be stricken.

Q. Mr. Kirkham, with respect to these two meetings, was there anything said as to what specific jobs should be covered by this phase "all employees of the Employer at Juneau, Alaska"?

Mr. Andersen: I think I will object. The witness said nothing was said about it at all.

Mr. Banfield: He said nothing was said about the exclusive bargaining agent. It was agreed to. I am asking if anything was said with relation to this phrase as to what work it would cover.

The Court: Objection overruled.

Q. You may answer that.

A. Our agreement, our talk we had up there, we said that we [273] would load the scows and barges, that everything where we used our own equipment, that we would load, if I understand your question right. That is what came in there. We also stated at that time, which I don't believe was in any contract, that we wouldn't touch anything that came in there which had ship's gear on.

Q. That part "ship's gear on," that was not mentioned?

A. That is right. We wanted to be the sole bargaining agent for that Company. That was one of the main reasons in there.

(Testimony of Glen Kirkham.)

Q. Did the I.W.A. insist on that provision?

A. We did, up here in the meeting.

Q. Was that fact known by the Company?

A. I don't know. I couldn't tell you whether it was or not, but anyway that is what we wanted.

Mr. Banfield: If the Court please, we will produce a witness here to show that he is unable to find these wires in the file of the I.W.A. by the man who has charge of them. We have a right to show what was in this wire that was returned from the International by this witness. If the Court please, the copy of that wire or, no, I think it was a letter—Mr. Strayer says he is quite sure a copy of that wire was furnished to Local 16. They may have it.

The Court: Hasn't he already testified to the contents of that wire? [274]

Mr. Banfield: No; I didn't put that in.

Mr. Andersen: That is true, your Honor.

Q. Mr. Kirkham, do you have any copies of these wires? A. No, I haven't.

Q. Do you know where they would be?

A. They are supposed to be in the records of the Union at the Hall. Shortly after that wire came I was put on a different job here. I couldn't belong to the Union any more. I read the wire and I believe it was put in the—I believe the Secretary had it in his book up there.

Q. Was that wire used at any other time here in Juneau, do you know?

(Testimony of Glen Kirkham.)

A. I am not sure, but it seems to me like it were.

Mr. Andersen: I move that be stricken as a conclusion of the witness.

The Court: Motion denied.

Q. Mr. Kirkham, do you know the contents of the wire returned from the international?

A. I couldn't quote it, but the wire stated for us to go ahead as we had been doing before and also said that if any trouble started that they would be up immediately.

Mr. Andersen: Same objection, I assume, as to all this line of questioning?

The Court: What objection is that?

Mr. Andersen: Incompetent, irrelevant and immaterial. [275]

The Court: It seems to me that before the witness is questioned as to the contents of the reply or answer that perhaps the telegram that elicited or asked for this advice should be put in.

Mr. Banfield: That is another thing that we can't find at this time.

The Court: Then his testimony first should be why that was sent to headquarters.

Q. Did you send a wire to headquarters yourself? A. No, the Secretary.

Q. Did you see it? A. I saw a copy of it.

Q. What was in that?

A. Asking for a decision of this loading of scows and barges and explained to them just what our stand was up here and we got the answer back immediately and they told us which way to go.

(Testimony of Glen Kirkham.)

The Court: Was anything said in that telegram as to the claims of Local 16?

A. No.

Mr. Andersen: I beg your pardon. I didn't hear the last answer.

The Court: No.

Q. Mr. Kirkham, you mentioned here what was voted on by the Union prior to this agreement. You stated the Union voted [276] not to handle anything while it was attached to the gear of a ship. Whose ships would that be?

A. That would mean commercial ships.

Q. And what if you were using Company gear?

A. I don't think we discussed that.

Q. Did the Union decide on what work it would do and what work it would not do?

A. We decided to load scows and barges but anything that came in here with ship's gear on it, that is also Government ships, we wouldn't touch it, just take the stuff to the bullrail. That is the agreement we made.

Q. How about Company-owned vessels?

A. We loaded them right along. Nothing was said about that.

Q. Had it been your practice? A. Yes.

Mr. Banfield: You may cross-examine.

Cross-Examination

By Mr. Andersen:

Q. During this period of time there were quite

(Testimony of Glen Kirkham.)

a few meetings between the Union and the Company?

A. Only two or three meetings, only to straighten out our contract, that is all they were for.

Q. In other words, you were trying to negotiate a contract with them? [277] A. Yes.

Q. Finally on November 3 you entered into an agreement with them? A. Yes.

Q. And this is it, this contract dated November 3? A. That is the contract we agreed on.

Q. On November 3? A. Yes.

Q. This was your first contract with the Company, wasn't it? A. I beg your pardon?

Q. Was this your first contract with the Company?

A. No, we had contracts before that. That is the first one I had anything to do with.

Q. Do you know if the I.W.A. had any other contracts with the Spruce Corporation?

A. Sure they had, I don't know whether they were with the Spruce or not.

Q. You mean with the Juneau Lumber Company?

A. Yes, and I think we were running on that until this was written up.

Q. In other words, the Juneau Lumber Company had a contract with the I.W.A. and from the time the Juneau Spruce took over from the Juneau Lumber you kept on under the same contract?

A. Under the same contract. [278]

(Testimony of Glen Kirkham.)

Q. And were paid the same wages?

A. Yes.

Q. And had the same working conditions?

A. Yes.

Q. And the same seniority? A. Yes.

Q. And they recognized the I.W.A. as bargaining agent, just as it was with the Juneau Lumber Company; is that correct?

A. Well, I don't know. I didn't have any dealings with them at all until this contract was written up.

Q. And signed? A. Yes.

Q. But during the intervening period from the time the Juneau Spruce took over from the time the Juneau Lumber sold—strike that. From the time the Juneau Lumber sold to the Juneau Spruce Company, and until this contract, Plaintiff's Exhibit No. 2, was written up, your wages were the same as they had always been?

A. No; I got a raise.

Q. You got a raise. Were your working conditions the same? A. The same.

Q. And you settled grievances the same as always?

A. If there was any grievance; I don't remember any.

Q. And operations were the same as for Juneau Lumber; isn't that true? [279]

A. I guess it is.

Q. All you fellows felt, and the Union felt, that

(Testimony of Glen Kirkham.)

the contract of the Juneau Lumber had carried on?

Mr. Strayer: I object to that.

Mr. Andersen: This is cross-examination.

The Court: What is the question?

Court Reporter: "All you fellows felt, and the Union felt, that the contract of the Juneau Lumber had carried on?"

Q. Right over to Juneau Spruce, and you worked under the same conditions; isn't that true?

A. Hardly true.

Mr. Strayer: I object to the questioning along this line, your Honor. It isn't material what this witness or others may have felt. It is a legal situation of carrying over these other contracts.

The Court: It is true he is being asked here to state what he believed was the agreement.

Mr. Andersen: Supposing I withdraw the question, your Honor.

The Court: And what or how the rest of the members felt about it, for whom I imagine he could not speak.

Mr. Andersen: I will withdraw the question.

A. I could answer.

Q. Suppose you answer my questions. We will get along a lot better if you just answer my questions, as I said. [280] You were the President of the I.W.A. Local here in 1947, correct?

A. Corect.

Q. Did you occupy that position in the Local in 1946?

A. No, I was just a member.

(Testimony of Glen Kirkham.)

Q. You only occupied that position one year, in 1947? A. I don't remember the dates.

Q. Do you remember the year you were President? A. 1947.

Q. Is that the only year you occupied that position in the Local? A. I think that is all.

Q. During 1947, say the first part of 1947, did you have any meetings with the Company at all?

A. In the first part of 1947?

Q. Did you have any labor meetings about anything? A. No.

Q. There were no grievances with the Spruce Company at all? A. No, not at that time.

Q. Did you discuss any wage raises with the Company during the first part of 1947?

A. I don't just remember when the wage raise came in, but when they raised the wages down below we got ten cents an hour up here. The Company gave us that without going to them at all. [281]

Q. As I understand, the old contract with Juneau Lumber Company had such provision in it, that if there was a wage increase given down below it would be automatically given under the old contract.

A. I believe it were, but the old contract was five years old.

Q. It ran from year to year?

A. No, it played out somewhere along the line?

Q. The contract was executed in 1942?

A. Somewhere along there.

Q. Wasn't there a clause that it carried from

(Testimony of Glen Kirkham.)

year to year unless one side gave the other notification of modification or something like that?

A. Something like that.

Q. So the first part of 1947—strike that. Do you recall whether you got your raise before or after May 1 of 1947? A. No, I don't recall.

Q. Didn't you get it after the first; isn't that correct? A. I don't remember the dates.

Q. You got it from this new Company, the Spruce Company?

A. Yes, and before that from Rutherford.

Q. You got your raise from the Spruce Company, the ten cent raise you mentioned?

A. I don't remember if it was from the Spruce or Rutherford. I got a raise and a check after Rutherford left. He sent back pay. [282]

Q. After Rutherford sent back pay and after Rutherford left you also got a ten cent raise, does that refresh your memory? After Rutherford left you got back pay?

A. Just as he was leaving here he wrote us out checks for back pay.

Q. When did he leave here?

A. I don't know that either.

Q. Well, it was sometime after he sold to the Spruce Company, didn't he? A. 1947.

Q. Sometime after June?

A. Chances are it would be.

Q. The same time you got the back pay checks is the same time you got your ten cent raise; isn't that true?

(Testimony of Glen Kirkham.)

A. I don't know whether it is or not. We got wage raises along the line.

Q. When did you get the first one?

A. I can't tell the dates.

Q. How many do you say are "several"—three?

A. There must have been three, two or three.

Q. All in 1947?

A. A five cent raise and a seven and a half cent raise and it seemed like ten cents.

Q. The first raise was in the first part of 1947?

A. Yes; I got all the raises that was coming in 1947. [283]

Q. Did you get a raise around the middle of 1947? A. I don't remember.

Q. And you got your last raise, say, after July of 1947?

A. I don't remember when those raises came.

Q. But after Rutherford left, is that true?

A. I wouldn't say it is.

Q. A few moments ago you said that after Rutherford left you got checks for back pay?

A. What Rutherford gave us—I don't know whether Roy left town but I got a back pay check.

Q. You testified after Roy Rutherford left you got a check for back pay and you also got a raise in wages. Is that true, sir?

A. If I knew the dates I would tell you whether it is true or false.

Q. It was you who said it was after Rutherford left; is that true? A. It might be.

(Testimony of Glen Kirkham.)

Q. Was it after he left that you got a raise in wages also?

A. You ought to have that written down and read it off; maybe. I can't remember the dates.

Q. You were called by Mr. Banfield.

Mr. Strayer: Your Honor, if Mr. Andersen wouldn't confuse the witness by when Mr. Rutherford left, if he would say "after the Juneau Spruce Corporation"—— [284]

Mr. Andersen: Suppose I ask my questions in my own way, may it please the Court.

The Court: The witness probably should be told if you don't remember—you are not obliged to know anything you might be asked—if you don't know or don't remember you can say so.

Q. The contract you had with the Juneau Lumber had a clause to the general effect that if there was a raise down below, that is, in other lumber industry in which the I.W.A. was interested, you would get a certain increase over that. Isn't that true? A. I believe it is.

Q. And when that raise was placed below you automatically got your ten cent raise up here; is that true? A. Yes.

Q. And is that after Rutherford left?

A. The ten cent raise?

Q. Yes. A. I don't know.

Q. You had a contract; you got a raise under the contract; isn't that true? A. Yes.

Q. How many meetings did you have with Mr.

(Testimony of Glen Kirkham.)

Card or Mr. Hawkins before the contract was signed? Did I understand you to say two or three meetings? [285]

A. Two, I believe. I think three meetings altogether. I can't remember all those things.

Q. And as I recall, somewhere around the 29th of October your Local had a meeting and you went over the proposed contract and about the 29th of October, and at that time everything was gone over and the Local decided to sign the contract and November 3 you finally agreed to enter into this agreement with the Company?

A. Yes, with the Company.

Q. Did you usually attend all meetings of the Local?

A. I wasn't to all of them; no. I was to most of them.

Q. You know that the question of who should do the longshore work was discussed in your Local?

A. In our Local?

Q. Yes.

A. Yes, it was discussed several times.

Q. And you also discussed the Constitution of the I.W.A., didn't you, that the jurisdiction of lumber workers extends from the stump until it is manufactured into the finished products in the mill?

Mr. Banfield: I object. That was not asked on direct. Mr. Kirkham testified there were two or three meetings with Mr. Card, that is all. If he is going to use him as a direct witness let him call

(Testimony of Glen Kirkham.)

him as his own witness when the time comes. [286]

The Court: But the witness was asked as to the scope of the work done by them and this examination falls within the scope of direct examination. Objection is overruled.

Q. In these meetings you held in your Union, such as on October 29 or any of these meetings when you discussed the question of barges, it was brought out in these meetings under your own Constitution, that is the I.W.A. Constitution, the labor claims or labor jurisdiction of the I.W.A. is from the stump until it is through the mill, that is true, isn't it?

A. Well, I don't know whether it is or not. You take lumber from finished products, you can take it from here down below and re-work it.

Mr. Andersen: I move that be stricken as not responsive.

Q. I asked you if you discussed that in your Union. A. Not to my knowledge.

Q. Don't you recall having any discussion at all?

Mr. Andersen: You have Section 3, I assume? (Addressing counsel for plaintiff.)

Q. Will you read Section 3 there, right opposite my thumbnail?

Mr. Strayer: Will you let me look at it, Mr. Andersen. I haven't seen it. [287]

(Document was shown to counsel for plaintiff.)

Q. I directed your attention to Section 3 of

(Testimony of Glen Kirkham.)

your International Constitution which I will read to you. "This Union shall be International in scope and shall unite into membership all working men and working women who are employed in or around any operation or employment having to do with the processing and handling of wood products at all stages from the stump to the finished product." Now, in your meetings, didn't you discuss that clause at all?

A. We did a few times. I remember it was mentioned a few times.

Q. It was in relation to a discussion around your own Constitution your Union finally passed a motion, wasn't it, that the loading of barges didn't belong to you, that it belonged to the longshoremen?

A. I don't remember anything like that.

Q. Do you know if you were present at a meeting of your Union April 1, 1948, shortly before the strike?

A. Not in 1948, I couldn't have been there because I was out of the Union in 1947.

Q. When did you leave the Union?

A. November, I think.

Q. By the way, what sort of work do you do now? A. Bull gang foreman.

Q. For whom? [288]

A. For the Juneau Spruce Corporation.

Q. You are one of the bosses down at the Company now, so to speak? A. Yes.

(Testimony of Glen Kirkham.)

Q. Just what is your position there?

A. Well, it is fixing docks and building barges and piling up lumber somebody knocks over and anything I am supposed to do in that line of work.

Q. Are you paid a monthly salary by the Company? A. No, I am paid by the day.

Q. Do you have men working under you?

A. Yes.

Q. How many?

A. That depends. Sometimes a couple, sometimes eight or ten.

Q. When were you employed on that basis?

A. This particular one?

Q. Yes.

A. I was yard foreman. I don't remember when I was taken off, but when Mr. Shultz came he changed it to bull gang foreman.

Q. And you left the Union?

A. It was right after that was signed, that contract.

Q. When did you get this foreman's job you now have? A. In November.

Q. And then you left the Union, is that true?

A. Yes.

Q. Aren't you still friendly with the Union?

A. Why, sure.

Q. Did you discuss this problem with the Union people, I.W.A.?

A. Since I got out of the Union? Nobody discussed these things with me since then. Once in

(Testimony of Glen Kirkham.)

a while it was mentioned, a few things, but not general discussion or anything of that kind.

Q. You learned that Local 271 voted to turn the work over to the longshoremen?

A. No, I don't know anything about it.

Mr. Strayer: The witness testified he is no longer a member and he is not competent to testify to the views of Local 271.

The Court: Not unless he was at the meeting.

Mr. Anderson: That wasn't my question, may it please the Court.

Mr. Banfield: He asked "didn't you know that the I.W.A. voted to turn this work over to the International Longshoremen's Union" and the witness testified that he was not at the meeting of April 1 when that was done or the meeting of April 9.

The Court: It would call for hearsay, but if he wants hearsay he can ask for it on cross-examination. Objection overruled. [290]

Q. Did you learn that information, sir?

A. No, I never heard any one discussing that.

Q. Nobody in the plant or no friends of yours in the Union?

A. I have plenty of friends on both sides but we aren't down there talking this Union stuff down on the job.

Q. The strike, or rather the lockout, was on April 10, 1948?

A. I don't remember if it was April the tenth.

(Testimony of Glen Kirkham.)

Q. April 10, wasn't it?

A. Something like that.

Q. Between April 1, about March 15 until the time of the lockout, a great part of the discussion was about trying to avert this difficulty, wasn't it?

Mr. Strayer: I want to object to counsel's term "lockout." That is in great controversy here, whether there was a lockout or not. He can ask questions without using terms of that character.

Mr. Andersen: I simply based it on Mr. Hawkins' testimony that there was a lockout by the Juneau Spruce.

Mr. Strayer: That doesn't mean there was a lockout.

Mr. Andersen: I have a right to use his terms.

The Court: Mr. Hawkins testified your plans characterized the difficulty. You can't take advantage of that.

Mr. Andersen: Your Honor is probably right.

Q. In other words, we will put it this way. There were two pickets or four, on the tenth, weren't there, of April? [291]

A. There were two there on the tenth, if I remember right.

Q. So between April 10th and March 15th there was quite a bit of talk there at the mill, isn't that true?

A. I was switched to night foreman in the yard and the night shift didn't seem to know anything about this until the night of the strike, so I heard very little of that.

(Testimony of Glen Kirkham.)

Q. You didn't interest yourself in this problem?

A. They didn't present it to me.

Q. And you didn't interest yourself in it, isn't that true?

A. That is right. If I didn't know about it, how could I?

Q. Now you say you had a first meeting with a committee of the longshoremen where you discussed with the Union the work claims of the respective organizations; that is true, isn't it?

A. You mean when I was President?

Q. Yes.

A. I don't hardly get your question.

Q. Do I speak loud enough for you?

A. No, not quite.

Q. Tell me if I don't. How many meetings did you attend while you were President of the Local to discuss the question of work claims with representatives of Local 16 here? A. One.

Q. And when was that? [292]

A. I don't remember the date.

Q. It was in 1947? A. 1947 sometime.

Q. The fore or later part?

A. The fore part.

Q. The fore part?

A. It was before June, if my memory hasn't failed me too much.

Q. That is of 1947? A. 1947.

Q. And the longshoremen, as I understand your previous testimony, said that they always considered

(Testimony of Glen Kirkham.)

the handling of cargo in and around docks as their work, is that correct?

A. I don't know whether that was brought up at that particular time or not. We came together as to the loading of scows and barges.

Q. How long did the meeting last?

A. For half an hour.

Q. Nothing came of that, is that true?

A. Nothing so far as I know.

Q. It was just a general discussion where they talked with you?

A. We gave them the floor; let them explain what they wanted. Mr. McCammon and Mr. Ford done most of the talking. [293]

Q. Shortly after that was there another meeting with the I.L.W.U., that is, Local 16?

A. Not while I was there.

Q. While you were in office and with Local 16, nothing more was said about it, the matter simply dropped?

A. There was nothing while I was at the meetings.

Q. After that meeting you wrote a letter to Local 16? A. Our Secretary wrote one.

Q. Did you look for a copy to see if you had one?

A. I have been out of the Union so long it wouldn't do me any good.

Q. Did you go up and inquire?

(Testimony of Glen Kirkham.)

A. I think it is up to the President of the Union to find that. I think he has it.

Q. At the Juneau Spruce Corporation and the Juneau Lumber Company, longshoremen had always done a certain amount of longshore work there, hadn't they? A. Done some; yes.

Q. After the Juneau Lumber sold to the Juneau Spruce, they had the same work?

A. They came down a few times when there were box shooks.

Q. There was no difference if it was the Juneau Lumber or the Juneau Spruce—they did the same work? A. I don't think you understand.

Q. Just answer the question. [294]

A. You don't understand.

Q. What I am asking is this? After the Juneau Lumber sold to the Juneau Spruce longshoremen still worked down there, substantially the same as when the Juneau Lumber had it, isn't that true?

A. I guess so.

Mr. Andersen: That is all.

Redirect Examination

By Mr. Banfield:

Q. Mr. Kirkham, did you ever make any investigation to determine whether I.W.A. men loaded barges under this Constitution?

A. Yes, I did.

Q. Where?

A. Down in the States, in different mills down below.

(Testimony of Glen Kirkham.)

Q. Do I.W.A. men load barges down there?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial, may it please the Court.

Mr. Banfield: May it please the Court, he is bringing in the Constitution. He used the phrase "from the stump to the finished product." We want to show just what the I.W.A. Union does under the Constitution with respect to loading barges under this Contitution.

The Court: You want to prove a custom? [295]

Mr. Banfield: I want to prove a practice: in other words, how they operate under the Constitution and By-Laws and what is meant by "finished products" in the Union By-Laws.

Mr. Andersen: May it please the Court, I think custom and practice have to be limited to this port. If we are going beyond this port, if we go one port beyond, then both sides can go to every port in the United States where I.W.A. would have a contract, and we would be here interminably. It is not a question of other ports, but here.

The Court: Custom can be general throughout the industry and is not limited to one port. If it is the purpose to prove custom here, the question may be asked.

Mr. Andersen: The same objection, may it please the Court.

Q. I withdraw that question and ask this question: Have you made any investigation to determine how this provision is interpreted by the I.W.A.

(Testimony of Glen Kirkham.)

on the West Coast? A. The West Coast?

Mr. Andersen: Just a minute. That question calls for "yes" or "no" answer.

Mr. Banfield: I asked if he made an investigation.

Mr. Andersen: The answer is "yes" or "no."

Q. You can answer. Did you? A. Yes.

Q. Where did you make the investigation? [296]

A. I made it down in Oregon.

Q. What did you find? A. I found——

Mr. Andersen: The same objection, as it is incompetent, irrelevant and immaterial.

The Court: I am wondering how it could be competent to show how this particular provision is construed elsewhere. I can't see how it is competent to show the construction placed on this provision by some other branches of this Union.

Mr. Banfield: If the Court please, the purpose is to show that from the stump to the finished product means from the time the timber is felled in the woods until the manufacturing is completed and it includes the transportation of it, at least certain phases of it. All the handling—I want to show it includes the handling of lumber.

The Court: In other words, what you want to show now is how this particular provision is interpreted by the Union generally?

Mr. Banfield: Yes, under their International Constitution, what is it that governs these people in their actions.

(Testimony of Glen Kirkham.)

The Court: Evidence is already in as to the interpretation by headquarters. Objection overruled. You may answer.

Q. You may answer that, Mr. Kirkham. [297]

A. You mean about the loading?

Q. Yes.

A. Around Waldport, Oregon, I inquired——

Q. I just asked what the interpretation was, not exactly what town, but——.

Mr. Andersen: I object to that as calling for a conclusion of the witness.

The Court: I don't think at the present time he can state that, unless you examine him as to what interpretation is placed by the Union. One inquiry at a certain place is not a sufficient basis.

Q. I want to show what interpretation is placed upon it by various local Unions; what is the practice?

A. Down there they have regular loaders on those rivers. It is all scows there. They lift it to the dock, and after they lift it to the dock it is loaded and taken down the river and turned over to the longshoremen. I think they call them stevedores that load those boats, nothing but those scows.

Q. Are they I.W.A. men?

A. I don't know. They may be.

Mr. Andersen: I move that be stricken as speculative.

A. That is the way they load them.

(Testimony of Glen Kirkham.)

The Court: It doesn't appear that this information he has is sufficiently precise. [298]

Mr. Andersen: I move the answer be stricken, all of it.

The Court: The answer will be stricken.

Q. Now, Mr. Kirkham, how does your Union interpret this provision of the Constitution here? I want to know how it interprets it with respect to the loading of barges with lumber?

Mr. Andersen: He just testified he is not a member of the Union and didn't know much about it.

Q. How was it interpreted up to the time you left the Union and when you were President?

Mr. Andersen: May it please the Court, he left the Union in 1946, and in relation——

Mr. Banfield: I am sorry, it was in 1947. I would like to have the recital correct.

Mr. Andersen: He left the Union in 1947. It is too short a time.

The Court: Merely because he left the Union shortly after the execution of this contract would not preclude him from testifying if he was in the position he has been in since, in which he would be certainly likely to know how it was interpreted.

Mr. Andersen: Certainly not as a Union member, as I understand the question now, as foreman of the Company, rather than as a former member.

Mr. Banfield: I will withdraw the question.

Q. I will ask you, during the time you were President of Local M-271, I.W.A., how was the

(Testimony of Glen Kirkham.)

jurisdiction of the Local interpreted by the Local Union with respect to barge loading?

Mr. Andersen: That assumes something not in evidence; first, that there was such an interpretation, and secondly, it calls for a conclusion and opinion of the witness.

The Court: If there wasn't any such interpretation of course he may answer accordingly.

Q. Answer the question.

A. We said we would load the scows and barges. That is what the Local voted, and nearly one hundred per cent, too.

Mr. Banfield: That is all.

Mr. Andersen: No further questions.

(Witness excused.)

JOSEPH WILLIAM FRANCIS

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. Mr. Francis, will you state your full name.

A. Joseph William Francis.

Q. Where are you employed?

A. At the Juneau Spruce. [300]

Q. How long have you been there?

A. I went to work there the 19th of January, 1948.

Q. Have you worked there ever since?

(Testimony of Joseph William Francis.)

A. Except for the period that the mill was shut down, April 9th to about the 19th of July, I guess.

Q. Have you ever been a member of Local M-271? A. You say, am I a member?

Q. Yes. A. Yes, sir.

Q. How long have you been a member?

A. Since shortly before the strike or the picket line.

Q. Were you present at the Union meeting April 9th by the I.W.A. members in 1948?

A. You mean the meeting the night before the picket line went on?

Q. Yes. A. Yes, I was.

Q. Tell us what happened at that meeting.

A. It wasn't a regular meeting because there was a lot of——

Mr. Andersen: Just a moment, to which I object as hearsay and irrelevant and incompetent, may it please the Court.

Mr. Banfield: If the Court please, the purpose is to show the reasons why the I.W.A. observed the picket line and did not go through it and why the mill shut down, their [301] actions at that time.

The Court: Objection overruled.

A. Well, as I say, it wasn't a regular meeting because it was just a general meeting of all the employees of the mill and there was a lot of discussion pro and con as to the legality of the picket line to be put on in the morning. Most of us just heard

(Testimony of Joseph William Francis.)

about it that afternoon. There were arguments about it and we decided——

Mr. Andersen: I object to narrative rather than conversation, may it please the Court. I think we should have conversation rather than the conclusions of the witness.

Q. How many men were there at this meeting, Mr. Francis?

A. So far as I know, the majority of the employees of the mill were there.

Q. One hundred?

A. I imagine closer to two hundred.

Mr. Banfield: May it please the Court, I think under such circumstances it would be impossible to tell what everybody said at the meeting and that we are entitled to generalize.

The Court: What isn't clear to me is why it is important to show the reasons they decided not to go through the picket line. It seems to me what is important is that they decided not to go through the picket lines, not the reasons by which they arrived at that; that it was instigated [302] and endorsed by the I.L.W.U., Local 16. The question is, did they encourage them? It seems to me the question ought to be directed to show that. At the present time the question is too general.

Q. Mr. Francis, when this meeting opened was there any report or anything submitted to the meeting of what happened previously?

A. To the best of my knowledge, no.

(Testimony of Joseph William Francis.)

Q. Was there any previous meeting of the I.W.A. in which any action had been taken?

A. I think there had been a week before or something.

Q. Were you there?

A. No, I wasn't a member of the Union at the time.

Q. But you were at the second meeting?

A. Yes.

Q. Was any report made at the second meeting as to what happened at the first meeting?

A. I tell you, it was such a jumbled mess I can't really say. One of them said if the picket line was put on there, we would be blackballed.

Mr. Andersen: I move that be stricken as hearsay, and incompetent, irrelevant and immaterial and not connected with the defendants.

The Court: It will be stricken if it is not connected with the defendants. [303]

Q. You don't remember the report of the previous meeting? A. No, I don't.

Mr. Banfield: I am afraid the witness wouldn't be competent to testify to that. We can prove it by other means.

The Court: You mean he couldn't testify to what you mentioned a moment ago?

Mr. Banfield: No, because he didn't hear what went on.

Mr. Andersen: I might be able to assist counsel. I have a copy of the minutes of April 1.

(Testimony of Joseph William Francis.)

Mr. Banfield: I am not talking about a meeting of April 1, and I don't need your assistance, thank you.

The Court: Counsel should address their remarks to the Court.

Mr. Andersen: I am in error. I didn't know Mr. Banfield would flare up at an offer of assistance.

The Court: Are you through with this witness?

Mr. Banfield: If the Court please, that is all.

Mr. Andersen: I have just a few questions. Do you wish to read this? (Showing a document to counsel for plaintiff.)

Cross-Examination

By Mr. Andersen:

Q. I direct your attention——

Mr. Andersen: May this be marked for identification, [304] Mr. Clerk?

The Court: Defendant's Exhibit A.

The Clerk of Court: The exhibit has been marked for identification Defendant's Exhibit A.

Q. Mr. Francis, I want you to read this and see if you recognize what it is. Do you recognize that document, sir?

A. Well, as far as my recollection went, at that meeting of what took place at that meeting, this appears to be——

Q. Does it refresh your memory?

A. This appears to be——

Q. Does it refresh your memory?

A. No; it isn't exactly what took place.

(Testimony of Joseph William Francis.)

Q. I only asked you, sir, if you recognized the document.

A. No, I don't. I have never seen it before.

Q. Do the contents refresh your memory at all?

Mr. Strayer: Your Honor, please, I think counsel should not use the document to refresh his memory until——

Mr. Andersen: I have shown it to counsel.

Mr. Strayer: You haven't shown it as competent. It is not this witness's record. It is somebody else's record.

Mr. Andersen:- This purports, may it please the Court, to be the minutes of I.W.A. Local 271, here at Juneau, the minutes of the meeting of April 1, 1948, and the minutes of April 9, 1948, the witness having previously testified he attended the meeting of April 9, at which minutes of the [305] previous meeting were discussed.

Q. Now, with that before you, does that refresh your recollection?

A. Yes, we discussed whether or not——

Mr. Strayer: Has your Honor ruled?

The Court: I don't think it has to be his record.

A. We discussed whether or not we would cross the picket line.

Q. First answer, does it refresh your recollection?

A. No, I haven't seen these records, I haven't seen them. We discussed whether or not we would cross the picket line.

(Testimony of Joseph William Francis.)

Q. Let me have it. I will examine you a little further. You have read this, have you, sir?

A. That is right.

Q. On the meeting of April 9, didn't the I.W.A. Local discuss a motion that was made on April 1 and carried unanimously, isn't that true?

A. As I tell you, a general discussion took place. Five or ten men were talking on the floor at once.

Q. At the meeting of April 9, a special meeting, didn't they discuss a resolution, or a motion, rather, at a special meeting, which had been passed unanimously at a special meeting of April 1. Didn't they do that; didn't they discuss that previous motion that had been unanimously carried?

A. Possibly. I don't recall too well. [368]

Q. At that meeting of April 1 wasn't the discussion, wasn't this motion passed, "Motion made and seconded to go on record to not load barges. We figure this work belongs to the longshoremen" and it was passed unanimously. Wasn't that motion dis-discussed? A. This meeting of April 1?

Q. Yes. A. I wasn't there.

Q. I know you weren't there. That is what you have stated, but on April 9 didn't they discuss the motion passed April 1 and wasn't that the purpose, to further discuss the motion?

A. That is right.

Q. And the question is, a motion which had previously been made and seconded, "To go on record to not load barges. We figure this work belongs to

(Testimony of Joseph William Francis.)

the longshoremen," that is what was discussed, wasn't it? A. In a general way.

Q. And that previous motion had been passed unanimously by the Local?

A. By thirteen members, I think.

Q. On the meeting of April 9 which you attended, wasn't this motion made and seconded, "To take a vote on whether to cross picket line. Again a unanimous vote to honor picket line of" Local 16? Wasn't that passed by the 200 members [307] present?

A. It was, in this way. As I started to tell you, there was a general discussion as to whether the picket line was valid or invalid, whether the work belonged to us or the longshoremen. There was a general row, finally it was decided whether the picket line was legal or illegal, we wouldn't go through it until we knew more about it.

Q. That was unanimously passed, wasn't it?

A. Right.

Q. By the 200 members present. They decided for themselves they weren't going back to work, isn't that true?

A. That we wouldn't cross the picket line until we found out more about it. There was a lot of feeling for and against it.

Mr. Andersen: That is all. Thank you, sir.

Mr. Banfield: That is all.

(Witness excused.)

WILLIAM H. FLINT

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. Will you state your name, please.

A. My name is Mr. William H. Flint.

Q. Where do you live? [308]

A. A mile and a half out the highway from Juneau.

Q. How long have you lived here?

A. Since March the 6th or 7th of 1947.

Q. And have you worked for the Juneau Spruce Corporation? A. Yes.

Q. During what period of time have you worked for them?

A. I went to work for the Juneau Spruce on the second day of May, 1947.

Q. Until the present time? A. Yes.

Q. Have there been any interruptions in that employment? A. Yes.

Q. Now, Mr. Flint, are you a member of the International Woodworkers M-271? A. I am.

Q. How long have you been a member of that Local?

A. Since the first part of April of 1947.

Q. And did you attend meetings regularly in 1947?

A. From April until about the first part of November I went at least once a month.

(Testimony of William H. Flint.)

Q. And after that?

A. Then from then until the first part of April, 1948, I don't believe I attended. I may have attended perhaps one meeting, or two, maybe.

Q. And then after that? [309]

A. After that I missed only one meeting.

Q. Now, Mr. Flint, have you had any positions with the Union as Committeeman or officer?

A. Yes, in about I would say, oh, May, 1947, I was elected a Shop Steward and I held that job until April. The tenth day of April, about eight p.m., I was elected to head the Union, President of the Union.

Mr. Andersen: What year was that, counsel?

Q. April 10 of what year, Bill? A. 1948.

Q. And you are still President of the Union?

A. Yes.

Q. Mr. Flint, were you present at a meeting sometime in the summer of 1947, at which I.W.A. Local voted to determine what work they would do on boats and barges?

Mr. Andersen: To which I object as incompetent.

Q. And longshoring for the Juneau Spruce?

A. I couldn't answer that by saying I did attend a meeting just that way. I recall it was brought up to the officers. There was some argument.

Mr. Andersen: I object to that as not responsive, may it please the Court, whether he attended a meeting.

(Testimony of William H. Flint.)

Mr. Banfield: I will withdraw that question.

Q. Do you remember attending a meeting in the summer of 1947, at which the longshoremen had a committee there to discuss [310] what work they would like to have?

A. No, I wasn't at that meeting.

Q. You were not there? A. No.

Q. Did you attend the meeting of the I.W.A. on April 1 of 1948? A. Yes.

Q. How many persons were there?

Mr. Andersen: To which I will object as completely immaterial, may it please the Court.

A. Fourteen men.

Mr. Andersen: Please instruct the witness when I make an objection to remain quiet.

The Court: Yes. You should not answer when there is an objection. Objection overruled.

Q. How many persons were there?

A. Fourteen men, if I recall correctly, counting the officers, and also there was a group from the Local 16.

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial as to how many.

The Court: Objection overruled.

A. There were also a group from the Local 16, I.L.W.U. I would say about five members of their Local.

Q. And at this meeting, did the I.L.W.U. members, were they present at the time you held your official meeting or [311] was it before or afterwards?

(Testimony of William H. Flint.)

A. They were there before we called our meeting to order.

Q. And what did they say?

Mr. Andersen: May I have—that is all right.

A. They were there for the reason——

Mr. Andersen: Just a moment. I will object to that. The question was "what was said," not the conclusions and opinions of the witness.

The Court: Yes.

Q. Tell what was said.

A. They said that they wanted work——

Mr. Andersen: And a further objection. I would like to have the names of the people mentioned, rather than saying "five people."

The Court: The names should be stated.

Q. Will you state who was there representing the I.L.W.U.?

A. I can state some, but not all, of them. There was Joe Guy, Orville Wheat—Orville Wheat, I can't swear to that. I will say I think, I think but I am not positive. Then there was Mr.—I know he was an old fellow, I can't recall his name—one of the gentlemen that was out in the audience, I don't know his name.

Q. Which man?

A. On the end of the long row there.

Q. Mr. Burgo? [312]

A. That is right. And others—I don't recall who was there.

(Testimony of William H. Flint.)

Q. Do you remember any members of the I.W.A. there?

A. James Gleaton, Goldsmith and Nels Lee and myself, of course.

Q. All right. Tell us what the longshoremen's representatives said at this meeting.

A. They said they wanted the work of loading lumber onto the Company-owned scows and they said that the other group of Committeemen who had been sent up there before and asked for lift work and hoisters were in error and were no longer on the Committee and they did not want carrier driver or lift driver, but they would get for us the wage scale for the men who drove the hoister trucks as long as they were loading the barges. They said they had a contract for the work with the old Company, before Juneau Spruce, and that they did not show us, but they showed us the withholding slips, income tax slips, from the Juneau Spruce, where they had worked for Juneau Spruce.

The Court: You mean Juneau Lumber Mills or Juneau Spruce Corporation?

A. Juneau Spruce. And then they asked if we would take a vote and give them an answer after our meeting.

Q. Did they say anything about this contract with the Juneau Lumber Mills being binding on Juneau Spruce? [313]

Mr. Andersen: I object, may it please the Court, as calling for a conclusion.

(Testimony of William H. Flint.)

Mr. Banfield: I asked if they said anything.

Mr. Andersen: Also it is very leading and suggestive.

The Court: It is leading and of course it wouldn't be proper to ask it in that form unless it appeared that the witness didn't remember.

Mr. Banfield: He said—he indicated that was all they asked for and I am refreshing his memory now. That is the purpose. I didn't ask it in any way to suggest the answer. It is true it can be answered "yes" or "no."

Mr. Andersen: I submit the inflection was very suggestive. I submit the objection is made.

The Court: I think you had better ask him if anything else was said before that.

Q. Do you remember anything else that was said at this meeting by the I.L.W.U. men?

A. Naturally, when they said they had a contract which carried over from the old Company, why, it would be the idea there would be that.

Mr. Andersen: I object and move it be stricken. It is simply a narrative on the part of the witness and he testified as to a conclusion and I might also add that is an argument on the part of the witness.

The Court: Yes; it is not admissible. Objection sustained.

Mr. Andersen: The answer may be stricken, your Honor?

The Court: Yes.

Mr. Andersen: Thank you.

(Testimony of William H. Flint.)

Q. Did they say anything about whether or not the contract of the Juneau Lumber Mills carried over to the new Company? A. Yes.

Q. What did they say?

A. They said that whenever a company bought from another company they assumed the obligations of that company, which would be also their contract with them.

Q. Did the members of the I.L.W.U. say anything about your Constitution?

A. I think they mentioned the fact. Now, I couldn't swear to this one. They pointed out to us that our By-Laws did not cover barge loading or loading of any type, and after they left we did look it up in our By-Laws.

Q. But they brought up the subject?

A. I think they did. I am not positive of that.

The Court: You mean the By-Laws?

A. And Constitution for the Local Union.

Q. Did they say anything while they were there in regard to their practice otherwise or other places entitling them [315] to this work?

A. They said the work had always been theirs in this area and they had done the work for the Juneau Lumber Mills, and that work was the kind of work their Local did up and down the Coast and was a past practice of theirs to do longshore work.

Q. Did they say anything about what effect it would have on you men or did they say anything about picket lines on this meeting of April 1?

(Testimony of William H. Flint.)

A. They mentioned if they couldn't get the work otherwise they would have to picket the sawmill in order to get it.

Q. Was any statement made by the I.L.W.U. men as to what effect it would have on you men as workers if you went through the picket lines?

Mr. Andersen: I object, may it please the Court. In the first place, it is leading and suggestive. The witness went through the entire conversation. Now counsel says, did they say this or that? It is leading and suggestive and calls for a specific kind of answer.

The Court: Since the last question is on a new phase I think the witness should first be asked if they said anything with reference to the picket line.

Mr. Banfield: That has been aswered, your Honor.

The Court: No, I think you just asked him—you have asked him in such a way, that is, the question is in such a [316] form that defense counsel objected to it.

Q. Let me go back to the previous question, Mr. Flint. Did the I.L.W.U. men say anything about the picket line?

A. I don't believe at that meeting that they stated anything about the picket line except the fact that they did not want us to go across that picket line.

Q. Did they say they would establish a picket line or would not?

(Testimony of William H. Flint.)

A. They did say they would establish a picket line if they couldn't get the barge loading.

Q. Did they say anything about what effect there would be on you men if you went through the picket line? A. If we went through?

Q. Yes.

A. No, they didn't say anything about what would happen if we went through it at that time.

Q. What did the I.W.A. decide to do at that meeting about that work?

A. After they left we had about an hour's discussion, I would say, and then the President or Vice-President, acting President at the time, called for a vote on whether or not we would respect the jurisdiction of the I.L.W.U., Local 16, until more could be found out about the situation in case a picket line was established and the result of that vote was that thirteen men voted "yes" [317] and one man, I don't believe, voted at all.

Q. Now, Mr. Flint, in this discussion which the I.W.A. had, what factors influenced them in their decision; that is, what influenced you in your decision?

Mr. Andersen: That is immaterial, may it please the Court.

The Court: Yes, I rather think that is immaterial.

Mr. Banfield: If the Court please, I don't like to be argumentative. I would like to take an exception to the Court's ruling and ask a reconsidera-

(Testimony of William H. Flint.)

tion. I think it is entirely material for the witness to show the effect these representations of the I.L.W.U. had upon the members, to induce and encourage them to refuse to work.

The Court: Well, you have already brought out the factors.

Mr. Banfield: What they stated, but whether or not they believed or paid any attention to it——

The Court: You want to bring out that there were others? You have brought out that there was a thirteen to one vote, but not how, what the result of the vote was.

Mr. Banfield: If the Court please, we have showed what the I.L.W.U. represented to the Union. Now we want to show because of those representations or at least being influenced by those representations, that the I.W.A. decided not to go through the picket line and not work for their [318] employer and that is one of the fundamental things in this case, to show they were induced by the longshoremen.

The Court: That is an inference the jury can draw. You have these facts that are brought out and they can appraise them and draw their own conclusions.

Mr. Banfield: I think the jury is entitled to know to what extent the I.W.A. was induced and encouraged by the I.L.W.U. One contention could be that they didn't believe it. Some other one might really be afraid of them and have felt that he was put on the ground where they might suffer.

(Testimony of William H. Flint.)

The Court: Well, you mean that there was some ground for their decision that hasn't been brought out?

Mr. Banfield: Not an additional representation by the I.L.W.U., but I want to show that the representations of the I.L.W.U. did, in fact——.

Mr. Andersen: You are talking about Local 16, counsel; is that correct?

Mr. Banfield: Local 16, at this particular time, that Local 16's representations did, in fact, have an effect upon the action taken and did, in fact, induce and encourage the employees of the employer not to handle the products.

The Court: Isn't that an unavoidable conclusion?

Mr. Andersen: May it please the Court, I would like to assign the Court's conduct. The only physical facts we have here are what this witness stated. A few longshoremen went [319] up and talked about it. I think probably that the evidence is admissible so far as Local 16, but to go beyond and state a conclusion is error and this witness can't probe into the mind of anybody else or any other reasons which so far haven't been talked about. The longshoremen, Local 16, were there and made certain statements, and this witness testified to it. I think that closes the subject.

The Court: Unless there was a discussion of some particular ground presented by the Local 16,

(Testimony of William H. Flint.)

and that they gave it a lot of weight and that is what induced them to make their decision.

Mr. Andersen: As your Honor stated a few moments ago, it is only important or material whether or not they voted to go back to work. That is the only thing of importance. The rest is all immaterial, as I see it.

The Court: Do you wish to show that?

Mr. Banfield: Weight and credence.

The Court: To whom?

Mr. Banfield: To any or all.

The Court: You may show that if these grounds were discussed in such a way that it won't be a matter of speculation on the part of the witness.

Q. Were these various representations made by Local 16 discussed after the Committee from Local 16 left? A. Yes. [320]

Q. And do you know whether or not the representations made by Local 16 had any effect upon the members? A. Myself; yes.

Mr. Andersen: To which I will object, and I move that the answer be stricken. For the purpose of objection I ask the Court again to caution the witness not to answer when an objection is being made.

The Court: I think that the question should not go beyond eliciting the grounds upon which they made their decision.

Mr. Banfield: That is right. I am asking now if the representations made by the I.L.W.U. had any effect upon the final decision made.

(Testimony of William H. Flint.)

Mr. Andersen: I object to that as calling for a conclusion of the witness and hearsay, so far as the defendants are concerned.

The Court: You may answer if you know.

A. I know it influenced myself.

Mr. Andersen: I move that be stricken as not responsive.

The Court: The answer will be stricken.

Q. Did it influence you as a member?

A. Yes.

Mr. Andersen: I object to that as incompetent. May I again ask the Court to caution the witness.

The Court: I think it was immaterial. There was a majority vote and it would be the ground upon which the majority vote would be predicated that would be important, not what weight he gave to any particular facts.

Mr. Banfield: Obviously, if the witness is not permitted to testify what influenced the vote of the majority, he is going to have to testify what influenced his vote and we will call as many of the rest of the twelve as we can. We are precluded—I want this perfectly clear—from showing that the I.L.W.U. Local 16 representations had any effect on their decisions?

The Court: You have shown their representations and you have shown their decision, and now it seems to me that it is just a matter of inference as to what induced the decision.

Mr. Strayer: We shouldn't be put in the posi-

(Testimony of William H. Flint.)

tion of inference when we have positive testimony.

The Court: I ruled if you could show because of the discussion held there preceeding the vote what did make them make the decision, you can show that. That rule still stands. It appears now he can't speak for the others. He can only speak for himself. Now, if you consider it vital to your case since it is nearly noon, the Court will excuse the jury until two o'clock and you may make your offer in the absence of the jury.

Whereupon the jury was excused until two p.m. of [322] this day and retired from the courtroom.

Mr. Andersen: As long as there is no testimony being taken, I assume the witness also will be excused, your Honor?

The Court: Yes.

Whereupon the witness retired from the courtroom.

The Court: You may state what it is you desire to bring out by the witness.

Mr. Strayer: We consider that it is material, your Honor, to show the representations made by Local 16, I.L.W.U. did have an effect upon the minds of the members of I.W.A. in reaching their decision not to go back to work, and we contend we can prove that only by the witness on the stand to prove what the discussions were in the meeting of the I.W.A. after the I.L.W.U. left, discussions and sentiments, before the vote was taken.

(Testimony of William H. Flint.)

The Court: I ruled you could do that but I thought you wanted to go beyond. The majority action is precluded so far as what lay in this witness's mind. It sounds as though you wanted this witness to guess.

Mr. Strayer: I understand your Honor ruled out any testimony of what was said at the meeting after the Local 16 men left.

The Court: No; I ruled to the contrary. You could show whatever discussion was had preceeding the vote as distinguished from showing what the effect was on this person or [323] this witness's mind.

Mr. Banfield: I think the Court ruled we could show discussion brought out by the I.L.W.U.

The Court: Yes, so long as it was what the majority said and not merely what was in this witness's mind.

Mr. Strayer: May I get this? There were thirteen men voting on the motion to respect the picket line. It seems to me if all the other twelve men were here each should be allowed to say what influenced them because the sum total would indicate positively the reason for the action. If that is so, I should think each man present at the meeting would be allowed to express the effect on his mind of the representations.

The Court: The thirteen there would reflect the nature of this discussion?

Mr. Strayer: Very probably, if not certainly.

Mr. Andersen: May I be heard, your Honor? I

(Testimony of William H. Flint.)

love the parallel. There were thirteen members, and they call thirteen men. If they call thirteen men I would cross-examine them. At the next meeting this witness will testify there were two hundred men present. Mr. Strayer can call the two hundred men to testify here and I—and we, of course—can cross-examine. I love Alaska during the short time I have been here, Judge, but at the present time I have no intention of changing my residence and if we follow this line we will [324] be here ad infinitum. I think counsel misconstrues the law. The longshoremen came there and made certain statements. We certainly aren't bound, that is, Local 16 can't be bound, except by what they said. It doesn't make any difference what those people discussed in the meeting. It hasn't the faintest bearing on the ultimate conclusion at the meeting. Only what the longshoremen said, they can be bound by. The I.W.A. is not a party to the proceeding. What was discussed in camera is not our concern.

The Court: You make that additional objection to the one that it is hearsay?

Mr. Anderson: Yes, your Honor.

The Court: On the ground of competency?

Mr. Andersen: I beg your pardon?

The Court: On the ground of competency?

Mr. Andersen: Incompetent; yes.

The Court: I think it comes primarily within the rule or doctrine of res gestae and that is why I have been admitting it.

(Testimony of William H. Flint.)

Mr. Andersen: I can't see the application of res gestae at all because it isn't part of the things done within the doctrine of res gestae.

The Court: Isn't this one of the things done?

Mr. Andersen: Not under the doctrine of res gestae.

The Court: A matter of this kind has quite a scope. [325]

Mr. Andersen: I think it has a limited application.

The Court: I don't agree with you.

Mr. Andersen: Res gestae, as I understand, and I could be wrong, when something happens all of a sudden and people make exclamatory statements so soon after an event that there is no change of mind it is particularly spontaneous. Here, so far as res gestae is concerned, the testimony is so far that the men from Local 16 went up there before the meeting and had a conversation with, apparently, a Committee of the I.W.A. Then the witness testified the longshoremen left.

The Court: I understand all that.

Mr. Andersen: Then for one hour, may it please the Court, one hour, the I.W.A. discussed this and after they discussed it pro and con there was a unanimous vote.

The Court: I understand all that. It is not necessary to state it.

Mr. Andersen: It is not res gestae at all.

The Court: The charge is that they induced the

(Testimony of William H. Flint.)

employees to go out on strike. It goes to the principal fact of the case, and that is the ruling of the Court so far as the ruling of the Court is concerned. We will recess at this time.

Mr. Andersen: Before we recess, so I don't have to argue again, I understand the witness is permitted to testify what is in his mind? [326]

The Court: No.

Mr. Andersen: Or is it limited——

The Court: To what was discussed there.

Mr. Andersen: I needn't object again. I object on the grounds already stated.

The Court: Yes.

(Whereupon Court adjourned until two o'clock p.m. May 3, 1949, reconvening as per adjournment with all parties present as heretofore and the jury all present in the box; whereupon the witness William H. Flint resumed the witness stand and the Direct Examination by Mr. Banfield was continued as follows:)

The Court: In the case of this witness I think there has been a lot of testimony as to conversations that might better have been eliminated, and as far as this witness is concerned you may ask him whether he knows what induced the action of his Union to which he testified, and if he answers that he does, then you may ask him what it was that induced the Union to take that vote, but as to any

(Testimony of William H. Flint.)

discussion leading up to it the Court holds that it is incompetent.

Q. Mr. Flint, do you know whether—do you know what induced the Union to take its vote at the meeting of April 1 and to decide to respect the picket line? A. Yes.

Q. Will you state what it was that induced them to do that? [327]

Mr. Andersen: Just a moment. I object for the reasons heretofore mentioned; that is, before the recess, and also upon the further ground that it calls for a conclusion and opinion of this witness, may it please the Court.

The Court: It calls for his knowledge. Objection overruled.

A. The fact that the longshoremen came to our Hall was the reason for having the vote, and the fact that they had told us they had a contract which covered that work and which would have been signed before our contract was signed, which I presume would therefore make our contract illegal or might cross it anyway. That caused the members to vote that the work should belong to them, also they stated it was their work in past practice and most unions go by past practice and therefore that would be their work on the basis of past practice, and the fact that they showed us witholding slips that they had worked for Juneau Spruce, that showed that they had been employees, and would therefore also be employees at the present time. That also in-

(Testimony of William H. Flint.)

fluenced the vote, and I could add something else, but it would probably be objected to.

Q. Now, did their representations which you testified to this morning, that they had this work all up and down the Coast and that the I.W.A. didn't have it, did that have any influence on your decision? [328]

Mr. Andersen: I object. The question was fully asked and answered.

The Court: I think all he can state is whether the representations made there is what induced them to take this vote.

Mr. Banfield: I am asking, if the Court please, if this particular statement made by the I.L.W.U. before the regular meeting of the I.W.A. as to coastwise participation of the longshoremen had any influence.

The Court: I thought you brought that out.

Mr. Banfield: He said "past practice." I presume, here in Juneau.

The Court: All representations made for the purpose of inducing or apparently for the purpose of inducing favorable action on the part of the witness——

Mr. Banfield: We shall limit it strictly to what the I.L.W.U. represented before the meeting.

Q. Did that influence them?

A. Yes; the fact that the work of loading lumber——

Mr. Andersen: May it please the Court, the same objection to this line of questioning.

(Testimony of William H. Flint.)

The Court: The same ruling.

A. The fact that the work of loading lumber would be classed as longshore work because it was the act of handling cargo, and they stated to our meeting that they had and were [329] handling all the cargo on the West Coast and that this work was still the same kind of work, therefore it should remain in the scope of their jurisdiction.

Q. Now, Mr. Flint, did you attend a meeting of the I.W.A. members and any other persons who might have been there on April 9, 1948?

A. I did.

Q. Tell me where the meeting was, when it was and who was there.

A. The meeting was in the C.I.O. Hall in Juneau, at six o'clock in the evening, and all the employees of the Juneau Spruce were allowed to attend, in fact anyone in the Hall then of the Juneau Spruce who wished to attend were able to attend.

Q. And did the Company give the employees time off for this meeting?

A. Yes. The night shift starts at six o'clock. They came up to the meeting then they worked an hour or so later in the morning to make up for it.

Q. In other words, the shift was just delayed for a time. A. Was delayed.

Q. At this meeting tell us what took place.

Mr. Andersen: The same objection, may it please the Court.

The Court: Objection overruled. I think first he ought to state whether any representatives of the

(Testimony of William H. Flint.)

defendants were there at the meeting.

Q. Do you know of your own knowledge whether there were any members of Local 16 there?

A. To the best of my knowledge, there were no members of Local 16 in the Hall.

Q. Could they have been there without your knowing? A. Yes.

Mr. Andersen: I object, may it please the Court.

The Court: Objection overruled.

Q. How many——

Mr. Andersen: Did the Court understand the question? Could there have been any?

The Court: The matter is of no importance. They can't bind you.

Q. How many persons were at the meeting would you say, Mr. Flint?

A. I would say perhaps 180, 150 maybe at the least.

Q. Was there action taken at the meeting as to whether or not the employees of the Juneau Spruce Corporation would cross the picket line?

A. Yes.

Q. How was that action taken?

A. After very much argument and oral discussion with several men on the floor at a time, the man who ran the meeting [331] got kind of disgusted with the way the meeting was going.

Mr. Andersen: I object.

The Court: Yes; tell what was done.

Mr. Andersen: May that be stricken, your Honor?

(Testimony of William H. Flint.)

The Court: Yes.

A. At the end of the meeting the man in charge of the meeting asked "Are we or aren't we going through?"

Mr. Andersen: I object to that also, as incompetent.

The Court: Objection overruled.

A. The man in charge of the meeting asked "Are we or are we not going through the picket line in the morning if it is established?" He said "All who are not going through, please stand." To the best of my knowledge, every man stood up, at least a great majority. That ended the meeting.

Q. Now, Mr. Flint, on April 10 did you go down to the mill? A. Yes.

Q. Was there a picket line there? A. Yes.

Q. Who was picketing?

A. I don't recall the names of the men, but there were signs on the pickets stating that it was I.L.W.U. Local 16, two of them.

Q. And how long did that picket line stay there?

A. It stayed there from that date up until right now, at the present time.

Q. Do they now—let me ask you this: when they first started to picket did they picket twenty four hours a day or just part of the day?

A. They picketed all day, twenty four hours a day.

Q. What do they do now?

A. They start picketing about seven o'clock and they quit about four forty-five or five o'clock.

(Testimony of William H. Flint.)

Q. In other words, they start in the morning and quit in the late afternoon?

A. That is right.

Q. Is that—tell me what hours the men work there at the mill now.

A. The men work from eight o'clock until half past four.

Q. And do you know how long the mill was shut down after the picket line was established?

Mr. Andersen: I think it is cumulative. It has been testified to about four times already.

The Court: It is not in dispute, is it?

Mr. Banfield: I think it is, and at least the jury should have it in mind, the dates they were there and the activities.

Mr. Andersen: Four witnesses already have testified that the mill hasn't worked between April 10 and July 19 or 16. [333] I think four people testified to it so far.

Mr. Banfield: I would like to ask the question. The mill hasn't operated since October 19 of 1948, to the present time. Maybe I could refresh my memory on that. I don't know.

The Court: Well, apparently there is no issue here as to the fact that the mill has been closed and the time that it has been closed has been established by one or more witnesses. That ought to be enough.

Mr. Banfield: It has not been established by any witness as to how long the mill operated after July 19.

(Testimony of William H. Flint.)

The Court: You may establish what hasn't been established then, in that respect.

Q. After July 19, Mr. Flint, how long did the mill operate? A. Until October 11.

Q. How many shifts a day? A. One.

Q. And after October 11 did it operate?

A. No.

Q. Now, Mr. Flint, after the picket line was established did the I.W.A. have any more meetings?

A. Yes.

Q. If so, were there very many present?

A. We had practically the whole membership for the first few weeks and as time went on it dribbled down to perhaps ten [334] per cent.

Q. How often did you have meetings?

A. Immediately after this dispute, we had a regular meeting the second Saturday of every month and the fourth Friday, and in each week in between we had a special meeting.

Q. Did the I.W.A. of which you were President at that time, make any investigation to determine the truth or falsity of these statements made by the I.L.W.U. members in the meeting of April 1?

A. Yes.

Q. And what did they find?

Mr. Andersen: To which I object as incompetent, irrelevant and immaterial and calling for a conclusion and opinion of the witness, may it please the Court.

The Court: I think the preferable way to get at

(Testimony of William H. Flint.)

it would be to show the action taken by the witness's Union after the investigation of the representations made by the defendants.

Mr. Banfield: If the Court please, the Court has excluded any testimony as to why they took the action they did afterwards; in other words, the findings and causes for taking the action.

The Court: It is the result again, rather than the process, by which they investigated and made their findings. I think we will be here interminably unless we stick to the [335] results rather than the means of arriving at the results. If, as this witness has intimated, the Union made an investigation later on these representations and then took other action on the basis of their findings, why that can be testified to, but as to what they discovered in the process of investigation, I don't think that is competent. You can ask the witness if he found or the Union found whether the representations were true or false.

Mr. Andersen: May it please the Court, that would call for the conclusion and opinion of the witness.

The Court: Nearly everything would call, so far as this kind of testimony is concerned, for an opinion. Objection overruled.

Q. Did the Union find these representations were true or false? A. False.

Q. Were they all false?

A. We asked them to show us where they did

(Testimony of William H. Flint.)

have—show us some written form of a contract where they did have the bargaining rights for that type of work. That contract was never shown to us. Also, as far as doing that kind of work at the Juneau Spruce before, or at the Juneau Lumber Mill, before we discovered that this was the first case of a Company-owned barge——

Mr. Andersen: I move that be stricken as hearsay and a conclusion and opinion of the witness.

The Court: His discoveries—he may state what was [336] done but not as to his or somebody else's opinions or conclusions during the process of the investigation.

Mr. Andersen: That is all that he is talking about.

Mr. Banfield: Your Honor, he answered once that it was false.

Mr. Andersen: It is clearly an opinion and conclusion of the witness.

The Court: You can cross-examine him on it. He has testified his Union found after investigation that these representations made to them were false. You can cross-examine.

Mr. Andersen: He doesn't show that he was on the Committee that made the investigation, your Honor.

The Court: You may cross-examine him. You may state what was done but so far as detailing what this person or that person said or thought during the investigation is not competent.

(Testimony of William H. Flint.)

Q. Go ahead and state what facts were established by the investigation to be false.

Mr. Andersen: I don't want to be presumptious, may it please the Court. From what your Honor said, he should strike the word "false." That kind of evidence——

The Court: I have already ruled on that. Proceed.

A. As I said, we found this was the first case of a Company-owned barge being loaded at the Juneau Spruce, therefore there was no past practice on that particular type of work. [337] We also found that this same type of work, with—in other words, the loading of lumber on Company-owned scows, with Company-owned gear, was being done in the States by our Locals, I.W.A. Locals in some places.

Mr. Andersen: I move that be stricken as having nothing to do with the representations made by the I.L.W.U. Local 16.

Mr. Banfield: If the Court please, the testimony was that at the meeting of April 1 the I.L.W.U. represented they did all of the loading of this type up and down the Pacific Coast.

The Court: After investigation it was found to be false?

Mr. Banfield: This is corroborating it, in other words.

Q. Now, Mr. Flint, about May 8, 1948, did you have any meetings with any members of Local 16 or any representatives of the I.L.W.U. International

(Testimony of William H. Flint.)

regarding the settlement of this dispute or the continuation of it? A. Yes.

Q. Now, tell us what meetings you had and what occurred and who was present and where. Start out with when, who and where.

A. We had a meeting on May 8 about four p.m. in the C.I.O. Hall in Juneau with Local 16 members, Vern Albright, [338] International representative of the I.L.W.U., myself and our Committee members, and Virgil Burtz, who is the Assistant Research Director of the I. W.A.

Q. And where was this? At the C.I.O. Hall?

A. That is right.

Q. Tell us now, what did the I.L.W.U. have to say at that meeting?

A. The main idea of the meeting was to see if we could settle the dispute and get the picket line removed and get our members back to work. It was more or less a meeting for our representative to find out what the case was about—he arrived on the plane that day—he got it from the I.L.W.U. and from us, on both sides, so he could investigate it and he also got the assurance from the I.L.W.U. in case this dispute would come to the point that it was deadlocked and nothing was being done, that they would remove their picket line and allow our Local in, our Union people.

Q. Did the I.L.W.U. promise that?

A. Yes.

The Court: Who, on behalf of the I.L.W.U. promised that?

(Testimony of William H. Flint.)

A. All the members that were there at the meeting from the I.L.W.U.

The Court: Are you speaking of the Local or the [339] International?

A. Local 16 and also Vern Albright, the International representative.

The Court: That is all.

Q. Where is Mr. Burtz from, where does he live?

A. He lives in Oregon.

Q. He lives in Oregon?

A. Portland, Oregon, is his home.

Q. And now, did Mr. Garst come on the scene about that time?

A. Mr. Garst arrived about a week or little less than a week later.

Q. Who was he?

A. He was representtaive of the United States Mediation and Conciliation Service.

Q. Now, did you have a meeting with him?

A. Yes.

Q. Tell us about the meeting that you had with Mr. Garst.

Mr. Andersen: I object to that as hearsay, may it please the Court.

The Court: Was it part of the same meeting?

Mr. Banfield: No, Mr. Garst arrived a week later.

The Court: I think the objection will have to be sustained.

Q. Was there any representative of the Local or the International at this meeting? [340]

(Testimony of William H. Flint.)

A. Vern Albright was there.

Q. Pardon?

A. Mr. Albright, the International representative.

Q. And where did the meeting take place?

A. The first meeting took place in the hotel room of Mr. Garst, at the Baranof Hotel.

Q. There was yourself, Mr. Garst and Mr. Albright? Was there anyone else?

A. Virgil Burtz.

Q. What was said after you arrived at this meeting?

Mr. Andersen: Could I have the date of this meeting?

Mr. Banfield: It is identified.

Q. Was it right after Mr. Garst arrived?

A. Yes; the day he arrived, May 14 or 15, somewhere in that area.

Q. For the sake of convenience, we will call this the meeting of May 14. A. All right.

Q. At this meeting on May 14 what was said by the I.L.W.U. and its representative, Mr. Albright?

A. I will have to lead up to that before I could answer the question.

The Court: Just state what occurred there.

A. I arrived and the meeting was already going for several hours or minutes, whatever it was, anyway before I got there. [341] It was explained to me by Virgil Burtz that a letter was being written. E. H. Card was writing a letter to the Company and

(Testimony of William H. Flint.)

outlining the jurisdiction of the two Locals and that he was going to have the letter brought back to the Baranof Hotel and Mr. Albright and myself and Mr. Burtz and Mr. Garst would look the letter over. Well then, the letter arrived and the jurisdiction was outlined.

Q. Was Mr. Albright there when the letter arrived?

A. Yes, and Mr. Albright read the letter and stated that one line which was in it was not the way it ought to be and would like to have it changed, and so we asked him if he would put it down as he wanted it and which he did, and he said if that was changed exactly the way it was written down that he would agree to it, so the letter was sent over to the Company again and that time——

Q. For what purpose?

A. To have this line re-written, and at that time Mr. Albright went back to his own hotel room.

Q. Now did—was the letter returned there to the hotel? A. Yes.

Q. Did you hear Mr. Burtz communicate with Mr. Albright? Do you have the letter or a copy of it, Mr. Flint? A. Yes.

Q. Could we see it? [342]

The Court: What are we waiting for now?

Mr. Banfield: For counsel to see the letter.

Mr. Andersen: I assume my objection runs to this testimony as incompetent and irrelevant. The entire testimony; I assume the same objection may run to it?

(Testimony of William H. Flint.)

The Court: Yes. Is this the letter the witness testified to a moment ago?

Mr. Banfield: Yes. I would like to ask Mr. Flint one question.

The Court: You are offering it in evidence now, aren't you?

Mr. Banfield: Yes.

The Court: It may be admitted and marked.

Mr. Andersen: I object to this as incompetent, irreleyant and immaterial, may it please the Court, and hearsay.

The Clerk of Court: This will be Plaintiff's Exhibit 6.

Q. Now, Mr. Flint, is this the letter Mr. Albright agreed to, that is, the terms of it?

A. That is right.

Q. And that is the final draft?

A. That is the final draft.

Mr. Andersen: I move the words "agreed to" be stricken as an opinion and conclusion of the witness, may it please the Court. [343]

The Court: Objection overruled.

Mr. Banfield: I would like to have the record show the letter, concerning which the witness was just questioned, is Plaintiff's Exhibit No. 6. I would like to read the letter at this time to the jury. "May 14, 1948. Mr. Virgil Burtz, International Woodworkers of America, CIO Juneau, Alaska. Dear Sir: Relative to your inquiry and request made in the presence of Commissioner Garst with respect to

(Testimony of William H. Flint.)

work requirements under our contract with Local M-271, IWA-CIO, we wish to advise as follows: All work on Company equipment and Company material is to be performed by Company employees under the terms of our contract with Local M-271. This includes the loading and unloading of Company barges or scows with lumber or other materials belonging to the Company, on Company owned or controlled property. We will not permit our employees to work on equipment or means of transportation belonging to other parties. This would mean that in the case of commercial steamships having the necessary equipment to load with, our employees would deliver the lumber with our equipment to ship's side where their work would end. Loading would be done by persons employed by the steamship over whom we would have no jurisdiction. In the case of unloading of any material consigned to Juneau Spruce and shipped by commercial steamship, unloading would be done by persons employed by the ship and our employees would not be permitted to perform the work. [344] "Once the materials or supplies had landed on our dock and the ship's tackle, (nets, gear, pallet boards etc.) are released our employees would perform the necessary work from that time on. In the case of cannery tenders or other boats having no equipment to load with we would use our crane and whatever men were necessary to that operation, but would not permit our employees to go aboard the boat to perform

(Testimony of William H. Flint.)

any work. Handling of lumber or box shook on board the boat would have to be done by persons employed by the boat, presumably longshoremen. In event our employees decide to return to work you have our assurance that there will be no discrimination against any of them because of their having engaged in union activity, or because of their having refused to cross the picket line at our plant. Very truly yours, Juneau Spruce Corporation, By E. H. Card."

Q. Mr. Flint, do you have the original copy of that letter? A. No. I do not.

Q. Does the Union have it in its files?

A. I doubt it very well.

Q. It was addressed, I believe, to Mr. Burtz?

A. That is right.

Q. Have you ever seen the original since this time? A. I can't recall having seen it.

Q. Now, after this letter arrived at the hotel, did you hear anyone communicate with Mr. Albright?

A. Yes.

Q. How was that communication made?

Mr. Andersen: Oh, now, just a moment. I will withdraw the objection for the moment, except that I am going to object on the ground that it calls for a conclusion and opinion, may it please the Court.

Q. Just state what was done.

A. Mr. Albright went over to his own hotel so when the letter came back from Mr. Card, why there had to be a phone call made to get ahold of

(Testimony of William H. Flint.)

Mr. Albright again. This was made by Virgil Burtz from his room in the Baranof. I listened while he called Mr. Albright. He told Mr. Albright that the letter had come back.

Mr. Andersen: I move that be stricken as hearsay and a conclusion and opinion of the witness.

The Court: Objection overruled.

A. He told him the letter had come back, and would like to have him sign it and that we get this thing all cleared up. Mr. Albright said something, I don't know what, and Burtz said "What has the International got to do with this?" and Mr. Albright said something else and Mr. Burtz then asked me if we could have a meeting that evening of Mr. Albright and Local 16 and I said "Yes" and he talked on the phone again and told Mr. Albright that there would be a meeting that night in his room in the Gastineau, [346] Mr. Albright's room in the Gastineau.

Q. Now, did you have a subsequent meeting with Mr. Albright? A. Yes.

Q. When was that?

A. That took place that same evening in Mr. Albright's room in the Gastineau Hotel.

Q. And who was present?

A. Mr. Albright, several members from I.L.W.U. Local 16, John Olafson——

Q. Who was John Olafson?

A. Secretary at that time of the I.F.A.W.A. or something.

(Testimony of William H. Flint.)

Q. A union?

A. Yes, C.I.O. A fishermen's local.

Q. A fishermen's local union?

A. That is right.

Q. Who else was present?

A. And Virgil Burtz and myself and there was some other members of our Local, I don't remember the names.

Q. Was Mr. Garst there?

A. Yes, Mr. Garst was there.

Q. What happened at that meeting?

Mr. Andersen: The same objection, may it please the Court.

The Court: Mr. Albright was present at that meeting? A. Yes. [347]

The Court: Go ahead.

A. We asked Mr. Albright why he wouldn't sign the letter and he said that he had a phone call from his International and also received a letter, which he said had made things, well, different, and it wouldn't work out if he signed the letter like he was going to do in the afternoon.

Q. Did he refuse to sign the letter?

A. Yes.

Q. And did he state to whom this letter had come?

A. If I recall correctly, he had received one and also the Local had received a—the Local, of that I am not positive. One or the other received a letter.

Q. Did he say who the letter had come from?

(Testimony of William H. Flint.)

A. From the International Union.

Q. Did he say anything else about any reasons for not doing this?

A. He stated he received word from another sawmill in Alaska, Sitka sawmill where the A.F.L. had the bargaining rights for the sawmill and that they were attempting there to take over the barge loading away from the longshoremen in that port also, and that if he had signed that letter that that would have given them an opportunity to take the barge loading away from the longshoremen in Sitka.

Q. Now, during the period from April 10 until July 19 were there any other efforts made in dealing directly with the [348] I.L.W.U. to settle this dispute? A. Yes.

Q. Just tell us what they were.

A. We had several meetings and we offered once that we would put the dispute up to the National C.I.O., a jurisdictional dispute, the C.I.O. council.

Mr. Andersen: May I have the time please and the persons present at this meeting?

A. I believe that was made quite a few different times.

Mr. Andersen: May it please the Court, may I have counsel lay a proper foundation?

The Court: Yes. The time ought to be fixed for it.

A. As near as I can remember, it was made by Virgil Burtz after he arrived. He arrived May 8 and it was perhaps a couple of days later, the eleventh of May, I would say probably.

Q. Was that done at a meeting with I.L.W.U.

(Testimony of William H. Flint.)

members?

A. I think it was an offer to Mr. Albright.

Q. Do you know where the meeting was, where the offer was made to Mr. Albright?

A. From the time that Burtz arrived here he spent every day with Mr. Albright. I was with them practically all the time myself and the offer could have been made any time.

Q. You don't know just what time it was?

A. No. [349]

Q. Do you know definitely the offer was made?

A. Yes, I know it was made.

Q. Explain just where the C.I.O. comes into this offer.

A. Well, the fact that both Locals in this dispute are C.I.O. Locals and are both under the same National Union and ordinarily if there is some dispute between a couple of C.I.O. locals or International Unions, either one, it would go up before the C.I.O. itself and they would settle the dispute as to who had jurisdiction.

Q. What was the decision, that is, what did Mr. Albright say about this proposal?

A. He said "No."

Q. Now, you testified that the I.L.W.U. had offered to pull off the picket line if things got too tough, and did the I.W.A. ever take them up on that offer? A. Yes.

Q. When was that?

A. We asked them several different times about that, from time to time.

(Testimony of William H. Flint.)

Mr. Andersen: Could I interrupt? The I.L.W.U., you mean I.L.W.U. Local 16?

Mr. Banfield: I will have to ask the question differently, counsel.

Q. Did you ever submit a proposal to either Local 16 or the International, and if so, which, to have them pull off [350] the picket line because things were getting too tough in the Union?

A. Yes.

Q. Who did you submit that to, the Local or International?

A. Mr. Albright and the Local, both.

Q. And what was the answer you got back from Mr. Albright?

A. Usually it was that we wait a little while and see if something happened, and because when we asked they would agree to pull their picket line.

Q. And did they follow through on that?

A. No, because——

Mr. Andersen: May it please the Court, I move that be stricken in its entirety. He started out to talk about Mr. Albright and then lapsed into plural terms and I don't know who he is talking about or to whom. May it be stricken, your Honor?

The Court: It should be made a little more certain, but any incidences of that kind can be taken care of on cross-examination.

Mr. Andersen: We will be put to extensive cross-examination, your Honor.

(Testimony of William H. Flint.)

The Court: No more so than counsel will be put to on direct.

Q. Mr. Flint, who promised to pull off the picket line?

A. Mr. Albright and the delegation from Local 16. [351]

Mr. Andersen: Could I have the time and place please?

Q. Do you know about when that was, you know it was after the picket line was established?

A. That is right.

Q. Before you went back to work? A. Yes.

Q. Place it as closely as you can in between.

A. I would say on May 8 when we had our meeting that afternoon.

Q. Now, did they pull off the picket line as promised? A. No.

Q. Did they promise to take it off right away or sometime in the future?

A. They said if it got to the point where our Local, well, would blow up and there wasn't any members left—in other words, our Local would be out of business—they would pull their picket line to save our Local.

Q. Did they say they would do that at your request or whenever they felt like it?

A. Whenever they felt it got to the point where we were going broke.

Q. Did you, pursuant to that agreement, inform them of the conditions in the Local? A. Yes.

(Testimony of William H. Flint.)

Q. And what did you tell them? I am speaking about Mr. [352] Albright. What did you tell them?

Mr. Andersen: I object.

The Court: You should be specific.

Q. Who did you tell it to?

A. I told it to Mr. Albright and several members of Local 16 at various times.

Mr. Andersen: May I have the time please, may it please the Court?

The Court: I assume he will follow it up.

Q. Identify it as well as you can; was it a month after May 8 or a week?

A. I could give you perhaps a hundred different times if I could recall all of them.

Q. Tell us one of them?

A. One I knew of for certain was a week before we went back to work.

Mr. Andersen: Do I understand the witness to say he talked to Mr. Albright then?

A. That was a meeting of Mr. Albright and Local 16.

Mr. Andersen: Read the answer please, Miss Reporter.

Court Reporter: "One I know of for certain was a week before we went back to work."

Mr. Andersen: A week before July 19. I see.

A. No, that is not correct.

Mr. Andersen: Pardon me. I am just having your [353] answers read.

Q. When was it that you told——

(Testimony of William H. Flint.)

Mr. Andersen: It has been asked and answered. He testified it was a week before he went back to work, July 19. It has been asked and answered, may it please the Court.

A. No.

The Court: He has indicated there is apparently a mistake about July 19. You may correct your testimony.

A. All the mistake here is that the mill started operation July 19. That was not the date when our Union went back to work at the sawmill.

Q. All right. When did you men first go back to work? A. The sixth day of July.

Q. You say it was about a week before that?

A. That is right.

Q. Who was present when you told him?

A. Leonard Evans, who at that time I believe was with the Labor Department, and members of Local 16, Mr. Albright, myself and my Committee members.

Q. Where was the meeting?

A. In the C.I.O. Hall.

Q. And what did you tell them?

A. I told them it had got to the point where our Local was going out of business because our members were leaving town. There was no work for them, and if it kept on very [354] long, why we wouldn't have any Union.

Q. Did you make any further requests?

A. I asked them to pull their picket line and leave us go back to work.

(Testimony of William H. Flint.)

Q. What reply did you get to that?

A. They said "Yes."

Q. They agreed to pull it? A. Yes.

Q. Who agreed to pull it?

A. Between Mr. Albright and the Local boys.

Mr. Andersen: I move that be stricken as not responsive.

Q. How many people said it?

A. In a meeting of that type they always have one man who is spokesman for the whole group.

Q. Who was spokesman?

A. Mr. Albright.

Q. On whose behalf was he speaking?

A. On behalf of Local 16, and seeing as he was a representative of the International, I imagine——

Mr. Andersen: I move that be stricken.

The Court: Read the witness's answer.

Mr. Andersen: After the word "seeing" I move it be stricken.

The Court: I don't know what the answer was. Will [355] you read it?

Court Reporter: "On behalf of Local 16, and seeing as he was a representative of the International, I imagine——"

The Court: Well, perhaps what he imagined should not be stated.

Q. Was the picket line pulled? A. No.

Q. Was any reason given to you by Local 16 or by Mr. Albright? A. Yes.

Q. What was the reason?

(Testimony of William H. Flint.)

A. At that meeting——

Mr. Andersen: May I have a foundation laid for this meeting, please?

The Court: It was the same meeting.

Mr. Andersen: I understood it wasn't. I understood counsel to refer to another meeting.

Q. They promised at a meeting a week before you went back to work that they would pull the picket line? A. That is right.

Q. When they refused to do it——

Mr. Andersen: That assumes something not in evidence.

The Court: He testified they refused to do it.

A. I don't believe I testified that, your Honor. I testified the picket line was not pulled. [356]

Q. Now, I ask you, was any reason given you for not pulling it? Was there a reason given?

A. Yes.

Q. When was it given to you?

A. At that meeting.

Q. At that same meeting?

A. The same meeting.

Q. The same night? A. The same night.

Q. All right. By whom?

A. That was—the whole thing wasn't just a case of "we will pull the picket line." It was a plan whereby the picket line could be pulled under certain conditions and the fact that we did not agree to that was why the picket line was not pulled.

(Testimony of William H. Flint.)

Q. They agreed to pull the picket line and then——

Mr. Andersen: I object.

Mr. Banfield: Wait until I am through.

The Court: It embodies the answer.

Q. Do you know if the conditions under which they would pull the picket line were imposed in advance or were imposed after they agreed to pull it?

A. The agreement was, "we will pull the picket line if our conditions go on as written out there."

Q. They conditionally promised to pull the picket line? [357] A. That is right.

Mr. Andersen: I move that be stricken. The witness states it was written up. The writing would be the best evidence.

The Court: That is true, the writing should be produced.

Q. Where is the writing?

A. I imagine it was ripped up after the meeting and put in the wastebasket, seeing as it wasn't any good.

Mr. Andersen: I move that be stricken as an opinion.

The Court: Objection overruled.

Q. Did you keep a copy? A. No.

Q. Do you know where there is a copy?

A. No. It was written. There were pictures and marks on it and it wouldn't be a legal document whatsoever.

(Testimony of William H. Flint.)

Mr. Andersen: I think that is for the Court to determine. There is no foundation.

The Court: I guess he refers to some peculiar chart.

Q. Mr. Flint, did you take a trip in the fall of 1948? A. Yes.

Q. How long had you worked at the mill before you took this trip in the fall of 1948?

A. I stated before I worked from the second day of May for the Juneau Spruce Corporation until now. [358]

Q. From the second day of May, 1947?

A. That is right.

Q. In the summer of 1948 before you took this trip, do you know whether or not there were any barge loads of lumber shipped from the Juneau Spruce Corporation?

A. Before I took the trip?

Q. Yes. A. In the fall of 1948?

Q. Yes.

A. There was a barge load at the Juneau Spruce; yes.

Q. Do you know where that barge went?

A. I merely saw the barge going out of the Channel and I knew—I mean I was told by different people in the office of the Juneau Spruce that it was going down to Prince Rupert.

Q. Do you know where it actually went?

A. I do not know actually myself. All I know is hearsay.

(Testimony of William H. Flint.)

Q. Do you know whether or not that barge was unloaded or not?

A. No, it was not unloaded.

Mr. Andersen: I move that be stricken, may it please the Court, as a conclusion and opinion of the witness, and I further object——

The Court: He says "I know."

Mr. Banfield: He said, "No, it wasn't unloaded."

Q. Where did you see the barge not unloaded?

Mr. Andersen: That is getting back to the question of what the witness knows. I told your Honor earlier that throws the door wide open as to what a person knows. Whether something was done or not depends on a proper foundation. To simply say, "Do you know"—there is no foundation for knowledge, may it please the Court.

The Court: It it just as simple to say, "I knew the sun was shining a while ago." I think where the witness is asked——

Mr. Andersen: The question would be, "Did you see the sun shining?"

The Court: He asked in those terms.

Mr. Andersen: I want to further object. As I indicated the other day Prince Rupert is in Canada. Our position is that anything that happened or may not have happened in Prince Rupert is not material to this case.

The Court: I rule now as I did then. It is evidentiary and admissible. Proceed.

(Testimony of William H. Flint.)

Q. Did you ever see this barge after that?

A. Yes; I saw the barge.

Q. Where?

A. I saw it in Tacoma, Washington.

Q. Was it still loaded? A. Yes.

Q. Was it still loaded with the same lumber and in the same [360] manner as when it left here?

A. Yes.

Q. Did you make any investigation there to determine why it had not been unloaded?

A. Yes.

Q. What did you find?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial and hearsay.

The Court: Is it based on hearsay?

Q. Who did you talk to about it?

A. I talked to the I.L.A., that is the A.F.L. longshoremen.

Q. What is the I.L.A.?

A. International Longshoremen's Association.

Q. What did they say about it?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial and heresay.

The Court: Objection sustained.

Q. Did you ask them to unload the barge?

Mr. Andersen: The same objection, may it please the Court.

The Court: Objection overruled.

Q. Did they agree or refuse——

Mr. Andersen: I object. The same thing, hearsay.

(Testimony of William H. Flint.)

The Court: Objection overruled. Did they unload it or did they not? [361]

A. They did not.

Q. Mr. Flint, before all you men went back to work in July of 1948, did they take any action as a Union to decide whether or not the men would return to work? A. Yes.

Q. Tell me, was that action taken at a meeting?

A. Yes.

Q. And what did they decide to do?

A. They decided that they would go back to work.

Q. Now, when they returned to work, did all of the members of the I.W.A. return to work?

A. No.

Mr. Andersen: I object to that as irrelevant, incompetent and immaterial.

The Court: Objection overruled.

Q. About how many members did you have at that time? A. Oh, I would say forty maybe.

Q. How many members of those forty do you think went back to work?

A. I got your first question wrong. I gave the answer what we actually had, who went back to work.

Q. How many members of the I.W.A. were holding cards in good standing at that time?

A. About a hundred and fifteen or twenty were holding the cards, I suppose. [362]

Q. How many went back to work on or immediately after July 6?

(Testimony of William H. Flint.)

A. Oh, about forty I would say.

Q. Now, in the course of time, did more come back to work, more of your members?

A. You are talking about which date?

Q. After July 6. You say about forty went back to work, right away.

A. I got mixed up again. The sixth of July we went back, the mill was not ready for operation, therefore only a small amount of men went back to repair the mill so it could operate. I would say about eleven went back on the sixth to get the mill ready, and on the nineteenth of July when the mill was ready for operation there was the other number I mentioned went back to work and then after that date I doubt if any more of our men came back to work.

Q. Now, do you talk to the men, the members of the Union, about why they don't come back to work? A. Yes.

Q. And why don't they come back?

Mr. Andersen: I object to that as hearsay, may it please the Court.

The Court: Why?

Q. Why is it that the members of the I.W.A. who are not working there but who did work there before the strike, [363] why is it they do not come back to work?

The Court: If he knows——

Mr. Andersen: That calls for an opinion and conclusion of the witness.

The Court: Objection overruled.

(Testimony of William H. Flint.)

A. They tell me if they come back they have to cross the picket line, therefore they do not wish to do that.

Q. Were there some men who came back after the nineteenth of July who were not members of your Union but who had worked there before?

A. I don't believe so.

Q. Are there any non-Union men working down there now? A. Yes.

Q. Have you talked to non-Union men who worked there before the picket line was established and immediately before, who have not returned to work? A. No.

Mr. Andersen: Same objection, your Honor.

The Court: What is the question? Repeat the question.

Court Reporter: "Have you talked to non-Union men who worked there before the picket line was established and immediately before, who have not returned to work?"

The Court: Answer that "yes" or "no."

A. No. [364]

Q. Now, how long did you say the mill operated after it got started in July?

A. Until October 11.

(Whereupon Court recessed for ten minutes, reconvening as per recess with all parties present as heretofore and the jury all present in the box; whereupon the witness William H. Flint resumed the witness stand and the Direct Ex-

(Testimony of William H. Flint.)

amination by Mr. Banfield was continued as follows:)

Q. Mr. Flint, what is the present official position of Local M-271 with respect to claiming the right to load these barges?

A. The position of M-271 is that we will load the barges until the National Labor Relations Board provides otherwise.

Q. How long has this been the official position of the Union? A. Since July 2, 1948.

Q. Now is I.W.A. Local M-271 a labor organization? A. Yes.

Q. Do its members participate in its affairs?

A. Yes.

Q. Does it bargain collectively for the employees of the employers? A. Yes.

Q. Now, in these various meetings which you have had with Mr. Albright, well, did he at any time ever tell you who [365] he was or what his official position was?

A. He told us that he was the International representative of the I.L.W.U. in Alaska.

Q. And meaning that he represented what; that is, you say the International; what did he say, some local?

Mr. Andersen: I object to that as calling for a conclusion and opinion of the witness.

The Court: If he knows what he claimed.

Q. He claimed that he was a representative of the International or the Local?

A. International Union.

(Testimony of William H. Flint.)

Q. Where did he claim his area or his jurisdiction was?

Mr. Andersen: This word "claim" calls for a conclusion and opinion of the witness.

The Court: The what?

Mr. Andersen: He used the word "claim," what he claimed. It is not a question of evidence, it is a question of conclusion.

Q. What did he say?

The Court: As I have said before, it is difficult to avoid an element of conclusion and opinion in a lot of questions. The Court can't rule them all out. Objection overruled.

A. What was the question?

Q. What did he say his area of jurisdiction was; that is, of [366] what area does he have jurisdiction?

A. All over Alaska.

Q. Did he at any time in your presence state that he represented Local 16?

A. No; he said that he was here to advise Local 16 in their matters.

Mr. Andersen: I move that be stricken as not responsive to the question, may it please the Court.

The Court: Motion denied.

Q. Now, Mr. Flint, at this meeting on May 8, 1948, you testified that there were a large number of I.W.A. members there and a large number of the I.L.W.U. and Mr. Albright did the talking. Mr. Burtz had just arrived and you were present. Did Mr. Albright say anything in the nature of a

(Testimony of William H. Flint.)

request that the I.W.A. recognize this picket line or refuse to go through it?

Mr. Andersen: I object to that as leading and suggestive, may it please the Court.

The Court: Objection overruled.

A. Are you speaking now of the afternoon meeting of May 8 or the evening meeting of May 8?

Q. The evening meeting of May 8, the meeting at which a large number were present, the full meeting.

A. The large meeting of the I.W.A.?

Q. Yes. [367]

A. And only Mr. Albright as far as the International or Local 16.

Q. Mr. Burtz and Mr. Albright were present?

A. Yes.

Q. And Local 16 was not present?

A. That is right.

Q. What did Mr. Albright say on that subject?

A. I asked Mr. Albright if he wanted to give our Local a word of advice in this dispute or a speech. He explained the whole dispute to them as he saw it and in that week, when our members were just about ready to go back to work—some were ready to go back by themselves without Union approval——

Mr. Andersen: That is not the question. The question is what was said.

Q. What did Mr. Albright say?

A. He told all the members going back to work through the picket line was a bad idea because a

(Testimony of William H. Flint.)

Union man just didn't go through a picket line and if he did, ordinarily he wouldn't get work anywhere else, blackballs, more or less, by the Unions, and if they did work in the mill it would only be for a certain length of time because the lumber shipped from here would not be unloaded down below.

Mr. Banfield: That is all. [368]

Cross-Examination

By Mr. Andersen:

Q. Are you employed at the present time?

A. Yes, I am.

Q. By whom?

A. I am employed by the Juneau Spruce Corporation.

Q. What sort of work do you do there?

A. When the mill is operating I work as a band saw filer.

Q. My question is what do you do there?

A. That is what I do there when the mill is running.

Q. My question is what do you do there?

A. Right now I am an electrician's helper.

Q. Electrician's helper? A. That is right.

Q. What does your work consist of there now?

A. If they put in a motor I run a line over to the motor and make sure it runs right.

Q. Have you been working there as electrician's helper since October 11? A. No.

Q. You say the mill closed on October 11?

A. That is right.

(Testimony of William H. Flint.)

Q. During the time the mill operated, what did you do? A. I was a band saw filer.

Q. After the mill closed what was the next work that you did? [369]

A. We worked around the yard on moving lumber around and we built certain presses and put roofs on buildings.

Q. And how long did that take?

A. That took until about the first part of November, I would say.

Q. Then what did you do?

A. Then I was a millwright's helper.

Q. What did you do then, what kind of work is that?

A. It is a job where they repair the mill, the actual part which operates, and get it in shape to operate.

Q. How long did you do that work?

A. Until about the end of December.

Q. Then what did you do?

A. Then I became the—I worked with the electricians from then on.

Q. Electrician's helper? A. Yes.

Q. How many electricians are there?

A. One.

Q. You are his helper? A. Yes.

Q. Has your rate of pay been the same during all this time? A. That is right.

Q. What is your rate of pay?

A. $1.70 per hour. [370]

(Testimony of William H. Flint.)

Q. What is the normal rate of pay for electrician's helper, if you know?

A. If you consider——

Q. Do you know the rate of pay for an electrician's helper?

A. Yes. It is not the same, though.

Q. What is it, less or more?

Mr. Banfield: If the Court please, I would like counsel to be more specific, state where the rate of pay is different.

Q. At the mill?

A. No; that is the rate of pay at that mill.

Q. $1.70? A. $1.70.

Q. What was the rate of pay of a band saw filer?

A. $1.70.

Q. And that is $1.70 too? A. Right.

Q. Do you know what the rate of pay for a band saw filer was generally in 1948?

A. Yes.

Q. What was it? A. $1.70.

Q. And you are now being paid what?

A. $1.70.

Q. Just what does an electrician do there when the mill isn't [371] working?

A. That is when he does all of his—all of the new construction work.

Q. Are you presently engaged in new construction work there? A. That is right.

Q. And for how long?

A. Since about the first of November, I imagine.

(Testimony of William H. Flint.)

Q. What is the construction work that is being done there?

A. We remodeled the whole saw mill as to how lumber flows through the mill.

Q. There was something the matter with the plant and it had to be remodeled?

A. Absolutely.

Q. What was the matter with it so that it had to be remodeled?

A. The lumber would get so far in the mill and it would start piling up and cause a bottleneck.

Q. It was so constructed they couldn't get enough lumber through it?

A. I don't know what you mean by "enough lumber."

Q. Not as much as they wanted, put it that way.

A. That is right; not as much as they wanted.

Q. In order to have a proper operation they had to close the mill this length of time in order to make all the changes you mentioned?

A. They wouldn't have had to; no. [372]

Q. What do you mean "they wouldn't have had to"?

A. For the simple reason they could make money with it like it was.

Q. But of course not as efficiently, is that what you mean to say? A. Not as efficiently.

Q. And they couldn't put out as much lumber; is that correct? A. That is right.

Q. And they decided to make all these changes

(Testimony of William H. Flint.)

so they could operate on an efficient basis; is that your understanding?

A. As long as the mill was shut they might as well make the changes.

Q. So it would work efficiently; is that true?

A. That is true.

Q. Who did you talk to about that?

A. All the bosses.

Q. Who, for instance?

A. There was a Mr. Harris, who is master mechanic, Mr. Shellenbarger, who is yard superintendent, and Mr. Johnson, sawmill superintendent.

Q. Did you talk to Mr. Johnson?

A. And Mr. Schultz, our Manager.

Q. Did you talk to Mr. Hawkins about it?

A. No; he isn't here.

Q. Did they tear out a lot of things Hawkins put in that [373] caused bottlenecks?

A. That is right.

Q. Mr. Hawkins had put in systems and things that caused bottlenecks which had to be ripped out in order to replace them according to Mr. Schultz's ideas so the mill could be operated efficiently; isn't that right?

A. Will you repeat that again, please?

Q. Will you read the question, Miss Reporter?

Court Reporter: "Mr. Hawkins had put in systems and things that caused bottlenecks which had to be ripped out in order to replace them according to Mr. Schultz's ideas so the mill could be operated efficiently; isn't that right?"

(Testimony of William H. Flint.)

Mr. Banfield: If the Court please, I object to this on three grounds. In the first place, no foundation has been laid that it is going to be material. It is another excursion such as he has made with all the witnesses that ends no place. In the second place, this man is not testifying as an expert on mill design or what creates bottlenecks, or how to run a sawmill, and there is no materiality apparent in this testimony. It is wholly incompetent, irrelevant and immaterial and not proper cross-examination. We did not ask that question of the witness or any questions about the efficiency of the plant or what is being done there now.

Mr. Andersen: May I make a speech too before the [374] Court rules?

The Court: I don't want any speeches made. If you have anything to say you can say it.

Mr. Andersen: I will be very happy to, your Honor. First, I want to find out what type of work this young man is doing there. Secondly, it goes to the interest of this particular witness, and third, finding out what he is doing there. He incidentally, uncovered it. I had no idea this was true, that the mill can't operate efficiently. Whether or not the mill operates efficiently is very important to this case. They testified they were going to put something like one million feet of lumber through and apparently, according to this man, they couldn't do it with the machinery installed by Mr. Hawkins, in order to do it efficiently.

(Testimony of William H. Flint.)

The Court: Objection sustained.

Q. With respect to this electrical helper——

A. Your Honor, counsel stated——

Mr. Andersen: Would your Honor tell the witness he is only to speak——

The Court: You can explain.

A. I would like to straighten out the record.

The Court: You want to explain some answer?

A. Counsel stated that I testified—I want to know if I am right or not—that I said that the mill couldn't run because Mr. Hawkins put in bottlenecks. Is that in the record? [375]

Mr. Andersen: He has no interest in the record. I think he shows he is an interested witness.

The Court: If you have any correction to make of your answer you may make it now. If you have in mind any answers you have made that you wish to correct you can correct it, or if you wish to explain any answer you may explain it, but that is as far as you can go.

A. I would say it was my assumption that Mr. Hawkins had put in bottlenecks.

Mr. Andersen: The witness has already answered the question. This is sort of a hind-sight or second thought. That is all.

Mr. Strayer: May the witness complete his explanation?

The Court: He made his explanation.

Mr. Andersen: I think he did.

Q. As part of your work as electrician's helper did you disconnect any equipment in there?

(Testimony of William H. Flint.)

A. Yes.

Q. Have you installed additional equipment?

A. Yes.

Q. And you say there is just one electrician and yourself working on the electrical work there?

A. I am the only one under the regular electrician.

Q. The two of you? [376]

A. Two of us; that is right.

Q. Do you work six days a week, five or four?

A. Six.

Q. And eight to five, or four, I assume?

A. To half past four.

Q. Whatever the hours are—by the way, are you still President of this Union? A. Yes.

Q. How many members are there in this Union at the present time?

A. Oh, we should have sixty men, although I can't say they are all members, having worked in the mill quite a few months, less than that in paying dues, but they do hold cards.

Q. Did you talk to anybody before coming to court about this case? A. No.

Q. You never talked to anybody about this case?

A. My wife.

Q. Haven't you talked to anybody about the case?

A. I have talked to several men about this case, but not material to this.

Q. You haven't discussed that with anybody?

(Testimony of William H. Flint.)

A. That is right; I have.

Mr. Andersen: Counsel came to the rescue.

Mr. Banfield: Counsel knows that no case is ever tried without talking to witnesses.

Mr. Andersen: He said twice he didn't talk.

Q. Haven't you talked in detail with these two gentlemen? A. Right.

Q. And talked with them for hours?

A. Not for hours.

Q. How long?

A. Maybe twice, a matter of a few minutes at a time.

Q. A few minutes each occasion? A. Yes.

Q. When was the first time?

A. The first time was perhaps a week ago maybe.

Q. When was the second occasion?

A. Yesterday.

Q. Before court?

A. Yesterday evening.

Q. So, of course, you did talk to them?

A. That is right.

Q. You said the first time that you didn't talk to anybody. A. You inferred——

Q. I didn't infer anything, Mr. Witness. I am just asking questions.

Mr. Strayer: I think the witness has a right to answer. [378]

The Court: The witness should be entitled to answer. If you wish to answer, you may do so.

Mr. Andersen: Of course.

(Testimony of William H. Flint.)

A. You inferred I talked directly before I came up here.

Q. I don't think I inferred anything. Is that your answer? A. That is my answer.

Q. Is that your full and complete answer?

A. Yes, as far as—I mean——

Q. I asked you if you discussed this case with anyone and you said "No." You know what the word "anyone" means, don't you?

A. That is right.

Q. That answer was wrong, wasn't it?

A. That is right.

Q. Yes; of course. By the way, you mentioned trips you took Outside; you took a trip to Portland?

A. That is right.

Q. How many trips to Portland?

A. Twice.

Q. When were they?

A. One in the latter part of May and one in October.

Q. Who paid for that trip, you personally?

A. On the May 1 trip?

Q. You said there was one in May?

A. By this Company, the Juneau Spruce. [379]

Q. Juneau Spruce? A. That is right.

Q. And you went down to Portland; how long were you there? I assume you went on business for the Juneau Spruce Corporation, as an electrician's helper? A. No.

Q. Who paid your expenses?

(Testimony of William H. Flint.)

A. The Juneau Spruce.

Q. You went on business for them?

A. No.

Q. Did Juneau Spruce pay your expenses?

A. Yes.

Q. Did they pay your wages while you were gone? A. No. I wasn't working then.

Q. In May? A. Right.

Q. Did you make a second trip? A. Yes.

Q. On business for the Company? A. No.

Q. It wasn't on business for the Company?

A. No.

Q. Who paid your expenses that time?

A. Our Union.

Q. Did the Company pay your wages while you were away? [380] A. No.

Q. You made a trip down there in July, didn't you? A. No.

Q. Were you in Portland on July 3?

A. No.

Q. Or were you in Portland on July 3 of 1948?

A. No.

Q. On July 3 did you on behalf of your Union sign any sort of a contract? A. Yes.

Q. Where did you sign it?

A. At the Juneau Spruce sawmill.

Q. In Juneau, Alaska?

A. In Juneau Alaska.

Q. And is that what is called a "Back to Work" Agreement? A. That is right.

(Testimony of William H. Flint.)

Q. Was that signed before or after your—that was signed after your first or second trip to Portland? A. The first trip.

Q. And was it before your second trip?

A. Yes.

Q. What was the date of this second trip to Portland?

A. October the ninth; I'm quite sure.

Q. October 9 of 1948? A. That is right.

Q. And you say on that trip your Union paid the expenses? A. That is right.

Q. Do you recall signing a "Back to Work" Agreement with the Juneau Spruce Corporation?

A. Yes.

Q. Do you recall what it said?

A. Quite a bit of it.

Q. Let me withdraw that for a moment. On October of 1948; or rather July 3, is that about the date you signed such an agreement?

A. As far as I recall it is the date.

Q. Have you a copy of it?

A. I have the copy in the Local files.

Q. Have you seen it lately?

A. I believe I have, within the last month.

Q. Have you read it? A. Yes.

Q. Did you turn it over to counsel?

A. No; I believe counsel could have got one from the Juneau Spruce Corporation.

Q. Why do you say you "believe" that?

A. Naturally if I got one, the Company also got one.

(Testimony of William H. Flint.)

Q. You say you "believe" counsel got it from Juneau Spruce Company?

A. I said if they wanted they could have got it from the [382] Juneau Spruce Corporation.

Q. You didn't supply them one then?

A. No.

Q. The contract memorandum of July 3, 1948, entered into followed the agreement of November 3, isn't that true? A. True.

Q. I assume you didn't have anything to do about the negotiations of November 3, as you weren't an official of the Local then?

A. No.

Q. And you were sort of fresh into the Union, is that right? A. Right.

Q. Some question came up about a question of the agreement of November 3, about if it referred to barge loading?

A. That would be hearsay.

Q. Would it be—let your lawyers——

The Court: You should answer the question regardless of whether counsel——

Mr. Strayer: I am not clear from the question if it was when the contract was negotiated or if it came up later on. I think counsel should make that clear.

Q. After the agreement of November 3, 1947—by the way, have you read the agreement of November 3, 1947? A. What was that again?

Q. Have you ever read the agreement of November 3, 1947? [383] A. Several times.

(Testimony of William H. Flint.)

Q. You are familiar with it then, aren't you?

A. Yes.

Q. Sometime between November 3, 1947, and July 3, 1948—of course the strike had occurred or lock out—or—— A. You say——

Q. Whatever you want to call it, sometime between November 3, 1947, and July 3, 1948; isn't that true? A. Yes.

Q. Somewhere during that period and sometime prior to July 3 the question was raised as to whether the agreement of November 3 had anything to do with barge loading; isn't that true?

A. That is right.

Q. Your Union wasn't certain whether the contract applied to barge loading or not, was it?

A. That is right.

Q. On or about July 3 you had a meeting with the Company—by the way, with whom did you discuss it in July, with the Company, what man in the Company did you discuss it with?

A. Mr. Schultz.

Q. He is the President of the Company?

A. No; he is Manager of this local sawmill.

Q. He is in court now? A. That is right.

Q. You wanted to straighten out what the contract referred to regarding barge loading because the Union was under the impression it didn't include barge loading; isn't that true?

A. I wouldn't say "under the impression."

Q. That idea; put it that way.

(Testimony of William H. Flint.)

A. Up until July 3 they weren't sure.

Q. Not certain, and the Union's position was that the contract of the third really didn't cover barge loading, so everybody wanted to have an understanding; is that correct? A. No.

Q. Let's put it this way: You said "No" Let's put it this way; of course if the contract had been clear on the question there wouldn't have been any necessity for a discussion of that problem with the Company, would there?

A. It was clear in our minds.

Q. It was clear in your minds but it wasn't clear in the Company's mind?

A. Not in a third party's mind.

Q. Who was that, Local 16?

A. That is right.

Q. Then you did discuss your contract then with Local 16? A. Many times.

Q. With whom did you discuss it?

A. They always had different men. Groups came to see all of [385] us. I imagine during the course of time all the members came in.

Q. Was there any one occasion when you discussed it?

A. On the eighth day of May when we had a meeting, Burtz and Albright and Local 16.

Q. Did you discuss the terms of Exhibit 2 at that time with Mr. Albright?

A. Our contract? Exhibit 2?

Q. Yes.

(Testimony of William H. Flint.)

A. Yes; we discussed the terms of the contract, too.

Q. You discussed the terms of the contract. Was there any discussion about the language of the contract in so far as it may have related to barge loading? A. Yes.

Q. That, of course, was before July 3, wasn't it?

A. It was.

Q. This agreement of July 3 is what is usually called a "Back to Work" Agreement, isn't it?

A. That is right.

Q. In which you agreed to go through the picket lines; isn't that true? A. That is right.

Q. You say there was some question in a third party's mind. Did you ever show that before it, the July 3 agreement, was signed, to any of the Local 16 men? [386] A. No, I didn't.

Q. Because you considered it none of their business? A. That is right.

Q. This contract was made solely between you and the Company; that is, your Union and the Company, isn't that true? A. That is right.

Q. You stated it was none of the Union's business? A. That is right.

Q. In that agreement of about July 3, was there any wording in that general agreement to the general effect that your Union claimed the jurisdiction of all work performed by all the employees of the Juneau Spruce Corporation, according to the contract, and also the loading of barges?

(Testimony of William H. Flint.)

Mr. Strayer: Your Honor, may the witness see the contract?

The Court: Yes.

Mr. Andersen: I am just asking the question, if that is in it.

The Court: Before the witness can be questioned about a writing, the rule here is that the writing has to be shown to him.

Mr. Andersen: At this point it is not necessary. I am just asking him his recollection of what the document contained.

The Court: I thought you were reading from it.

Mr. Andersen: Maybe I am, your Honor. I have the document right in front of me. I don't believe at this point I have to do it.

The Court: The local statute requires that before a witness shall be questioned regarding the contents of something in writing, that the writing has to be shown to him.

Mr. Andersen: Does your Honor want me to follow that procedure?

The Court: Yes.

Mr. Andersen: I will be glad to comply. You have seen this, counsel?

Mr. Strayer: Yes.

Mr. Banfield: I would like to have that last question read back, please, to see exactly what it was.

Q. Does this document refresh your memory?

A. Yes.

(Testimony of William H. Flint.)

Mr. Banfield: I would like to have the question read back, the previous question.

Court Reporter: "In that agreement of about July 3, was there any wording in that general agreement to the general effect that your Union claimed the jurisdiction of all work performed by all the employees of the Juneau Spruce Corporation, according to the contract, and also the loading of barges?"

Q. Was there? [398] A. Yes.

Q. In other words, this was sort of intended as a supplement to your agreement of November 3 to clear up who would handle the barges; is that the general idea? A. No.

Q. By the way, who drew this? Did you or somebody else draw it? A. I drew it.

Q. Is this your language?

A. That is my own language.

Q. Where did you draw the original?

A. At my home.

Q. By the way, I believe this should be marked for identification.

The Court: It may be so marked, Defendant's Exhibit B. (For identification.)

Q. You are sure this Exhibit B that I have here wasn't drawn in Portland?

A. Absolutely not.

Mr. Strayer: I think if counsel is going to continue to question from it, I think it should be put in evidence and read to the jury. I request that at this time.

(Testimony of William H. Flint.)

The Court: I suppose you intend to offer it, but by some other witness, but if you have no——

Mr. Andersen: I will offer it at the appropriate time. [389]

Mr. Strayer: Then we offer it at this time as Plaintiff's Exhibit.

Mr. Andersen: It was offered for identification. There is no objection to counsel offering it, I guess.

The Court: It will be admitted then.

Mr. Strayer: Will you read it, Mr. Andersen, or shall we?

Mr. Andersen: We will take care of things.

Mr. Strayer: I will ask the Court for the privilege of reading the exhibit at this time.

Mr. Andersen: May I ask the privilege of continuing my own examination?

The Court: I think it can be deferred until redirect examination.

Clerk of the Court: The exhibit has been marked Plaintiff's Exhibit No. 7.

Q. Now, I understand you testified that before the strike or lock out, whichever term may be used, at least before April 10 of 1948, that there were meetings of Local 271, your Union, where the question of barge loading, the jurisdiction of longshoremen and your jurisdiction was discussed; is that true? A. That is right.

Q. And on or about April 1, your Union prepared a resolution [390] of some kind or a motion regarding this question?

(Testimony of William H. Flint.)

A. A motion; that is right.

Q. And you were there at that meeting, weren't you? A. That is right.

Q. Was that motion to the general effect that the work belonged to the longshoremen?

A. No.

Q. It wasn't? A. No.

Q. Nothing like that was said?

A. Something like that was said.

Q. Was that the sense of the motion, that the work belonged to the longshoremen?

A. It was in respect to their jurisdiction.

Q. In other words, you didn't say the work belonged to the longshoremen? A. No.

Q. Is this in your handwriting? A. Yes.

Q. I will offer it.

Mr. Strayer: It has not been identified.

Mr. Andersen: It was marked for identification. We will take care of details.

The Court: As to this particular exhibit, it was undisputed that it was a memorandum or minutes of what occurred [391] at this meeting.

Mr. Strayer: It was not made by this witness, and the previous witness said he was not at the meeting, and counsel asked if he was testifying from hearsay, and he said "Yes."

Mr. Andersen: This witness testified it was in his handwriting.

Mr. Strayer: He doesn't testify that it was made at the meeting and I challenge counsel to have him do so.

(Testimony of William H. Flint.)

Mr. Andersen: I don't see what good it could do him to challenge a lawyer in the courtroom.

Q. This document you say is in your handwriting? A. My handwriting.

Q. That is the whole page? Not what appears to be marks of the Court.

A. Yes; the whole page.

Q. And when did you write these?

A. I copied those from the minute books of our Local Union on about—sometime in the month of May, 1948.

Q. And this, in other words as I understand it, is in your minute book, your Union's minute book?

A. The man who takes care of the minutes, the officer elected to take care of them, the Secretary of the Union.

Q. You didn't take care of that in April of 1948? A. No. [392]

Q. But when you wanted to find out what the motion on the floor in discussion was, you went to the minute book; you wanted to see as to what occurred in the Union meeting April 1?

A. I was asked to copy the minutes from our book, which I did.

Q. Who asked you?

A. Our lawyer at that time.

Q. Your lawyer asked you to get a copy of those minutes? A. Yes.

Mr. Andersen: May I read this to the jury? I will offer it in evidence at this time.

(Testimony of William H. Flint.)

Mr. Banfield: I object. It has not been identified to show who made it and how it came to be in the minute book and whether it reflects what happened. Anybody could put that in the minute book. There is no signature; no nothing.

Q. As I understand you, you got this from the minute book? A. Yes.

Q. They are excerpts that were requested by Mr. Banfield, is that correct?

A. No; he wasn't our lawyer.

Q. You mentioned "our lawyer."

A. Our lawyer—he is not our lawyer. He is the Company's lawyer.

Q. You personally as President of the Union copied it out of the official minute book of the Union; is that correct? [393] A. Correct.

Q. And whomsoever your lawyer was, you gave it to him as a true excerpt from the minute book of the Union; right? A. Correct.

Q. Did you say—of course, you copied it—you would say it is a true copy? A. It is.

Mr. Andersen: I think probably, your Honor, the only objection available would be that it is not the best evidence. This is a certified copy.

Mr. Strayer: We don't make that objection.

Mr. Andersen: Then I will offer it.

Mr. Strayer: The objection we make is that there is no evidence that it correctly reflects what happened at the meeting.

The Court: The objection was made before and

(Testimony of William H. Flint.)

will have to be sustained on that ground, unless this witness can testify that the record was made under his supervision and he knows that it was correctly made and recognizes the signature of the person.

Q. If I understand your testimony, you have a man in the Union that is an officer in the Union whose duty it is to take minutes?

A. That is right.

Q. His duty in taking minutes is to correctly take motions [394] and actions on motions taken at the Union meetings; is that correct?

A. Correct.

Q. And he is supposed to note this down into the book for that purpose? A. Correct.

Q. You know his handwriting, don't you?

A. No; I wouldn't say I know his handwriting now.

Q. At the time you made this excerpt?

A. I was quite sure it was his. It was in the minute book, and he had the minute book.

Q. Where did you get the minute book, from him?

A. Our books are all kept in a locker at the Hall.

Q. When you went to get the minute book you recognized it as the official minute book of the Union? A. Yes.

Q. Did this person happen to be there?

A. No.

Q. But you recognized it and his writing?

A. That is right.

(Testimony of William H. Flint.)

Q. And then you copied it?

A. That is right.

Q. And that minute book is under the control of the Union—your control as President, his control as Secretary?

A. Not when those were written it was not under my control. [395] At the time I got them they were under my control.

Mr. Andersen: I think we have laid a sufficient foundation.

The Court: He hasn't testified the record was correct at the time he made the copy.

Mr. Andersen: I think it is the record of an organization. I don't believe—we don't have to go into that question at this particular point.

The Court: When would it be gone into?

Mr. Andersen: On my further examination. This is apparently an official record of the Union.

The Court: You want it merely marked for identification?

Mr. Andersen: I want to offer it in evidence, may it please the Court. It has already been marked as Defendant's Exhibit A for identification. I would like to offer it as Defendant's Exhibit A in evidence, may it please the Court.

The Court: It has got to be shown by this witness or somebody else that the record of which that purports to be a copy was made by somebody whose duty it was to make it in the course of the organization.

(Testimony of William H. Flint.)

Mr. Andersen: He has testified to that.

The Court: He hasn't testified that he knew it was correct at the time it was made. That is the objection.

Mr. Andersen: You mean when he copied it, he copied [396] it correctly?

The Court: He would have to know that the original record from which he was making a copy was a correct copy.

Mr. Andersen: If that would be true, then any time that the man who wrote the minutes of a lodge died, the minutes themselves being the official record, would never be admissible in any court; the person having been deceased couldn't testify.

The Court: Before records are admissible, it has to be shown that they were made by the person who made them in the regular course of business and that it was his regular course of business to make them or that they were made under his supervision by someone under him and that he knows the record is correct. If that were not made under those circumstances then he would have to be able to testify that the record is not only correct, but that he recognizes the handwriting of the person who made it.

Mr. Andersen: I think it is admissible, but the witness can say whether it is correct or not after it is in evidence. May it please the Court, I think that goes to the weight of the document rather than——

The Court: Not so much what it relates is cor-

(Testimony of William H. Flint.)

rect, but whether the person who made the record made a correct record, and whether he knows it is a correct record.

Mr. Andersen: I will see if I can develop that, your [397] Honor.

Q. I assume the Secretary of your Local is instructed to take down correct records, isn't that true? A. He is instructed to do that.

Q. He does, doesn't he; so far as you know?

A. No.

Q. Oh, he doesn't? Then I direct your attention to that document and you say that is entirely incorrect, don't you?

A. No, I don't say that it is entirely incorrect.

Q. Is it correct?

A. No, it is not, sir. Parts of it are correct.

Q. Let me have it then. At the top it says, "Special Meeting, April 1, 19—" I think that is 1948. Then it says, "Discussion between Labor Committee of I.L.W.U. and those attending meeting relative to loading of barges and ships." Is that correct? Was it on April 1? A. Yes.

Q. It was in 1948? A. Yes.

Q. It was a special meeting?

A. That I could not swear to. I imagine it was.

Mr. Strayer: I make the objection that obviously counsel cannot do by indirection what he cannot do by direction. [398]

The Court: Objection sustained.

Q. Let's refer to the second meeting there of April 9, 1948, that has been mentioned. Is that a

(Testimony of William H. Flint.)

correct excerpt from the minutes, or incorrect?

A. That is the minutes of April 9?

Mr. Paul: Just a moment please.

Mr. Strayer: Just a second.

A. These minutes of April 9 are not minutes of a Local M-271 meeting.

Q. They are not? Are they in your handwriting? A. They are in our book and I copied them.

Q. Is this document also in your handwriting?

A. Yes.

Q. When you state it isn't true, do I understand that it is correct as far as it goes but that there is additional matter that should be there?

A. Not exactly that. I said the motion on April 1 ought to be reworded correctly and that the meeting of April 9 was not a meeting of our Local.

Q. What local does this special meeting of April 9 refer to?

A. That is all the employees of the Juneau Spruce Corporation.

Q. All of the employees?

A. That is right.

Q. April 1 is of the Local?

A. That is right. [399]

Q. And the one of the special meeting of the ninth was a meeting of all the employees, is that correct? A. That is right.

Q. With respect to this motion of April 9, April

(Testimony of William H. Flint.)

1, rather, was a "motion made and seconded to go on record to not load barges. We figure this work"——

Mr. Strayer: Just a moment. Your Honor, counsel is again now doing by indirection what he was refused permission to do. I don't want to be captious and Mr. Banfield doesn't either; if counsel insists, we can withdraw the objection and he can read it in evidence.

The Court: Who has the custody?

Mr. Andersen: They are not making the best evidence objection. They waived that objection. That is why I think it is clearly admissible.

The Court: But I have to pass on any objection that may occur to me on passing on the admissibility of something. I am wondering, if the person who is custodian of the original record——

Mr. Andersen: They have waived that.

Mr. Banfield: We will stipulate that it may be put in the record.

Mr. Andersen: That is fine.

Mr. Banfield: That is fine; sure.

The Court: I thought the objection you made a moment [400] ago, when I was about to admit it, was that it wasn't correct. If you want to waive that objection, why the Court has no objection.

Mr. Banfield: We have the privilege of cross-examining to show whether or not it is correct.

Mr. Andersen: That is why trials take so long. May I read this?

(Testimony of William H. Flint.)

The Court: Yes.

Mr. Andersen: "Special Meeting, April 1, 1948. Discussion between Labor Committee of I.L.W.U. and those attending meeting, relative to loading of barges and ships. Motion made and seconded to go on record to not load barges. We figure this work belongs to the longshoremen. By a written vote—thirteen members present—unanimous."

Q. I understand that was a regular meeting, rather a special meeting, of Local 271?

A. Right.

Q. And then the following week, April 9, you held a meeting also, didn't you? A. April 9.

Mr. Strayer: Pardon me, Mr. Andersen. May I have that exhibit number?

Mr. Andersen: It is Exhibit A.

Clerk of the Court: Yes, sir. The exhibit has been so marked. [401]

Q. On April 9 you held another special meeting? A. Well, the Local didn't; no.

Q. You used the minute book of the Local to record the minutes? A. I didn't.

Q. An official of your Local did?

A. He did at that time; yes.

Q. You threw the meeting open to all employees of the Juneau Spruce, is that correct? A. No.

Q. Where was it held? A. At the C.I.O.

Q. You usually hold your meetings there?

A. That is right.

Q. And the minute book is kept there?

(Testimony of William H. Flint.)

A. That is right.

Q. What percentage of the people at the meeting were sawmill workers and eligible for membership?

A. I think—and hope—all of them were.

Q. And you hope so? A. Yes.

Q. The question up for discussion—I will read the exhibit. "Special Meeting, April 9, 1948. Discussion on conditions relative to I.L.W.U. loading barges. Move made and seconded to take vote on whether to cross picket line—again [402] a unanimous vote to honor picket line of I.L.W.U." About how many were present at that meeting?

A. I would say 180 in the Hall. Who they were I don't know.

Q. You said they were all eligible for membership in your Union?

A. They would have been eligible if they wanted to join.

Q. And you only let sawmill workers join your Union, don't you A. That is right.

Q. Did you have meetings after that and until July 3? A. You mean of our Local?

Q. Yes. A. Yes.

Q. And with respect to Exhibit 7 for the Plaintiff, which is dated July 3, you signed that in Juneau as you stated, but where?

A. At the Juneau Spruce Corporation office.

Q. Were you alone at the time? A. No.

Q. Who attended you there?

(Testimony of William H. Flint.)

A. All the rest of the members. The names are on that piece of paper; if it is a true document, they are.

Q. You mean——

A. Five members, Rufus Chaney, Paul R. Beierly——

Q. Who was Rufus Chaney? [403]

A. A man who worked for our sawmill, a member of our Union.

Q. Who is George Converse?

A. He also works for the sawmill.

Q. Who is Paul R. Beierly?

A. He works for the sawmill.

Q. Who is Edward Hughes?

A. Vice President of the Local.

Q. They all were there with you, is that correct, and Mr. Schultz signed on behalf of the Company? A. That is right.

Q. I assume the Union had a discussion of this just before this, is that correct?

A. It was discussed at a meeting before, the night before at a meeting.

Q. The night before that, and you wanted to clarify it; that is why it was drawn up and brought down? A. That is right.

Q. When this Exhibit 7, Plaintiff's Exhibit 7, was drawn, of course there was a discussion in relation to your contract, that is the contract of November 3? A. I don't understand your question.

Q. When you drew this document which is Plain-

(Testimony of William H. Flint.)

tiff's Exhibit No. 7, I assume there was some discussion about the document in relation to Plaintiff's Exhibit 2, which is your Collective Bargaining Agreement? [404]

A. That is right.

Q. You wanted to clarify things, too, didn't you?

A. Clarify?

Q. Between you and the Company.

A. I wanted it clarified; that is right.

Mr. Andersen: Now, may I read this, your Honor?

The Court: It is an exhibit, isn't it?

Mr. Andersen: Yes.

The Court: Yes.

Mr. Andersen: Thank you. "July 3, 1948. Local M-271 International Woodworkers of America, C.I.O., agrees to cross the picket line established by Local 16, I.L.W.U. and claim jurisdiction of all work performed by employees of the Juneau Spruce Corporation according to our contract, also the loading of company owned or leased barges with company owned gear as stated in the Corporation's letter signed by E. H. Card and addressed to Virgil Burtz. The Juneau Spruce Corporation will hire all members of Local M-271 formerly employed by the company at the time the picket line was established according to seniority needed for the efficient operation of the plant on a single shift basis. The Juneau Spruce Corporation further agrees to file no charges against any member of Local M-271 or against the union as an organization, or to dis-

(Testimony of William H. Flint.)

criminate against any member for refusing to cross the picket line. The company agrees to open negotiations on [405] "a wage scale for all job classifications including barge loading comparable to rates in the states plus 10c per hour for Alaska retroactive to April 1, 1948."

Q. And it was sometime after that agreement was signed that you all returned to work; is that correct? A. That is correct.

Q. On this meeting of April 1 that you talked about I understand that a Committee of Local 16 came and talked to you, or was it before the meeting?

A. You are referring to the meeting of April 1?

Q. Yes. A. That is right.

Q. And for the purpose of this cross-examination the names Guy, Wheat and Burgo came there and talked? A. Yes.

Q. Talked with you, or all of you, or just a Committee of you?

A. With all of us at the meeting.

Q. Before the meeting?

A. Before the meeting.

Q. And how long were they there about?

A. I will say about a half an hour.

Q. And I guess you knew these fellows, didn't you, or were they strangers?

A. I knew some of them.

Q. I assume they told you in effect, as a matter of fact, [406] showed you, pay stubs for work they had done for Juneau Spruce?

(Testimony of William H. Flint.)

A. Pay stubs; that is right.

Q. They told your Union they had been doing this work for many years at the Juneau Lumber before the Juneau Spruce took over; isn't that correct? A. That is right.

Q. They told you, as you said before, that they had a contract with the Juneau Lumber?

A. Yes.

Q. They told you that? A. That is right.

Q. And that it was their opinion that that contract carried over; isn't that true?

A. Right.

Q. And that the contract carried over and hired longshoremen in the same way it always hired longshoremen; that is true, too, is it?

A. That is right.

Q. By virtue of those circumstances, they didn't want to see any claims for work come in conflict between your two Unions, and wanted to work everything out nicely and decently and without any trouble, isn't that true? A. Right.

Q. They came to give you all the facts. [407]

A. That is right.

Q. And after they gave you the facts they left?

A. That is right.

Q. And after they left your Union voted, in effect, that the work belonged to the longshoremen and you would respect them? A. No.

Q. Did your Union vote? A. Yes.

Q. Did your Union vote for the longshoremen to get that work?

(Testimony of William H. Flint.)

A. I can't answer "Yes" or "No."

Q. You can't answer "Yes" or "No"? Is it "cannot" or "don't want to"?

A. I want to.

Q. Suppose you answer "Yes" or "No" and as the Court stated, you have a perfect right to explain your answer, or is it impossible to answer the question?

A. I would like to state the motion, and then state yes or no.

Q. Suppose you answer the question first and then explain it.

A. If I am allowed afterward to explain——

Q. The Judge told you you could explain.

Mr. Banfield: First, would you read the question?

Mr. Andersen: Yes. Would you read the question?

Court Reporter: "Did your Union vote for the longshoremen [408] to get that work?"

A. Yes.

Q. Your answer is "Yes"?

A. Yes.

Q. Now you may explain.

A. We voted that we would respect the jurisdiction of the longshore Union until we knew who it actually belonged to, or words to that effect.

Q. Or words to that effect?

A. I can't quote it exactly.

Q. Now, does your Union follow the usual prac-

(Testimony of William H. Flint.)

tice of having a man to read the previous minutes?

A. We usually do.

Q. At the meeting of April 9, the minutes of April 1 were read?

A. I can't recall. I was not President at that time.

Q. You weren't there?

A. I was there, but I was not President at that time.

Q. Is it usually the custom every time you have a meeting to read the minutes? A. Yes.

Q. So far as you know, it was that night?

A. I imagine—I couldn't swear to it.

Q. Then they asked for corrections, omissions or additions? A. That is right. [409]

Q. And so far as you know, none were made at the meeting of April 9, no suggested changes to the minutes of April 1 were made?

A. No, they weren't.

Q. The minutes stood as read? A. Yes.

Q. They stood as recorded—unchanged, uncorrected, uncriticized—is that correct?

A. On the meeting of April 9?

Q. Let me put it again. On the meeting of April 9, following your usual procedure, the minutes of April 1 were read and no corrections were offered or made?

A. On that question, seeing it was not a meeting of our Local, I doubt very much if they were read. They may have been.

(Testimony of William H. Flint.)

Q. It was usually the practice?

A. It was usually the practice, if it was a meeting of the Local.

Q. When you went down to copy the minutes, as you have indicated, did you observe whether any changes had been made?

A. I copied them as they were.

Q. And didn't make any changes?

A. No.

Q. And didn't see any changes? A. No.

Q. When you took this vote, as you put it—I assume after the [410] longshoremen came up there and told you how they felt about this thing, that you fellows who were in there talked about it, and talked about it, I understand, for quite some time, about an hour, as I recall your testimony, before the vote? A. Before the vote; that is right.

Q. An hour or longer?

A. I would say about a half hour or an hour. I am not sure which.

Q. Did everybody in your Local have an opportunity to express themselves?

A. The members that were there.

Q. Everybody has the right to attend the meeting, all the members? A. Yes.

Q. So all the members expressed themselves after the longshoremen left? A. Yes.

Q. And then a vote was taken; is that true?

A. That is right.

Q. By the way, when the longshoremen from

(Testimony of William H. Flint.)

Local 16 met with you that evening, who was the spokesman—if you recall that they had a spokesman?

A. Yes. I couldn't remember it this morning. He was an old fellow in the gang and isn't here now. [411]

Q. You haven't seen him today?

A. No; not for months.

Q. In that conversation was there any reference to your own Constitution; that is, to the I.W.A.?

A. That is right.

Q. About the normal jurisdiction of the I.W.A.?

A. That is right.

Q. And they told you that loading boats and barges is usually and traditionally longshore work?

A. Right.

Q. And they wanted to do it and thought they had a right to; is that the substance of it?

A. Right.

Q. That is on April 1. They didn't say they were or were not going to put up a picket line?

A. Yes, they did.

Q. What did they say?

A. That they were going to the Company to see if they could get the work and if they couldn't they would put up a picket line so they could get the work.

Q. After this your Union, in effect, asked the Company to turn the work over to the longshoremen, didn't you?

(Testimony of William H. Flint.)

A. We sent a man with the Longshore Committee.

Q. Do you know the name of the man?

A. Gordon Peterson. [412]

Q. And was he officially representing your Union so far as you know?

A. As far as I know he was.

Q. Did he occupy any position in the Union?

A. Secretary.

Q. And did you attend the meeting with the Company? A. No.

Q. Well, before he went down there the Union had taken appropriate steps to advise the Company that so far as the I.W.A. was concerned, that is, Local 271, you fellows were perfectly pleased and contented to let the longshoremen do this work because it was traditionally longshore work anyway; isn't that true?

A. I couldn't swear to that, but I think a letter was written by the Secretary to the Company and advised them of the action of the meeting.

Q. What meeting are you referring to?

A. April 1

Q. April 1? A. April 1.

Q. You think a letter was written to the Company? A. I think so.

Q. As President of the Union did you see the letter?

A. I was not President at that time.

Q. In 1948? [413] A. That is right.

(Testimony of William H. Flint.)

Q. When did you become President?

A. I became President on the evening of the tenth of April about eight o'clock.

Q. That is after the second meeting then?

A. That is right.

Q. Were you—did you attend the meeting when that letter was authorized?

A. That I can't recall, if it was ever authorized or not. All I think is I think I have seen a copy in the file of a record like that, but I think there was.

Q. The general idea was that the Union passed a motion to advise the Company that M-271 wasn't interested in doing the work and they could turn it over to the longshoremen. Is that the sense of it, is that true? A. Yes.

Q. You fellows would have been perfectly content if this Plaintiff's Exhibit 2 would be modified to that effect; that was the idea, was it?

A. I could answer that "Yes" or "No." I don't want to. It might influence the jury, if I answered it "Yes" or "No."

Q. You might influence the jury? You can answer "Yes" or "No." The Judge won't mind.

The Court: Answer "Yes" or "No" and you can explain the answer. [414]

A. I will answer yes, and also I have the right to explain.

Q. Yes, you have.

A. We made that answer "Yes" for the simple

(Testimony of William H. Flint.)

reason that this is a small town. We are both C.I.O. Locals, and the barge loading is a very small percentage of our work.

Q. Too small to bother about?

A. Actually it is.

Mr. Strayer: I would like to have the witness make his answer without interruption.

A. As long as it was that small, to avoid fighting and keep the sawmill going ahead—that was the only reason we gave up our work. We did not know—but we gave it up to keep going and furnish the men work who had not worked all winter long. That is why we gave up our jurisdiction.

Q. So, as I say, you were perfectly willing to modify this contract? A. That is right.

Q. And you were perfectly willing to send them a letter, or did send them a letter, telling them they could modify it and let the longshoremen do the work without objection from your Union?

A. Correct.

Q. You say that was a very small portion of the work there, this barge loading was too small to bother about?

A. It is, and still is as far as we are concerned. [415]

Q. And still is?

A. What I mean is, there were eight men or six men involved in barge loading, whatever it is, I am not sure, and there were one hundred men down there working. A small percentage of the employees were barge loaders.

(Testimony of William H. Flint.)

Q. We went into that yesterday. For your information, it wouldn't amount to much more than $5,000 a year. That would be about your idea, would it?

A. I wouldn't know in terms of money.

Q. All right. After that letter was sent to the Company, did you receive a reply to that letter? Do you know? You were President by that time, I assume.

A. I don't know what you mean "by that time"?

Q. Well, after Mr. Peterson—strike that please. Do you recall the date Mr. Peterson went down to the mill? A. No.

Q. Was it after the meeting of April 9?

A. I don't hardly think so, because the picket line was up next morning.

Q. Was it between April 1 and April 9?

A. I imagine it was, that he went down there.

Q. Do you know if your Local received a reply to that letter?

A. I don't know. I don't think they did.

Q. You don't think the Company replied to it?

A. I don't know. I am not sure. [416]

Q. Did you have any conversation with officers of the Company to switch this work to the longshoremen for peace in Juneau? A.—Yes.

Q. Who did you talk to?

A. Mr. Hawkins and Mr. E. H. Card.

Q. How many times did you discuss this problem with them?

(Testimony of William H. Flint.)

A. I would say perhaps three or four times.

Q. They refused to follow the suggetsions in your letter, did they? A. Yes.

Q. And these three or four different times you talked to them? A. Yes.

Q. Just to go back to one other matter, as I understand it the longshoremen came to see your Union on April 1 and told you they had had this contract with the Juneau Lumber Mills and that they had been paid and showed you time slips, etc.; that is true, isn't it?

A. They showed us withholding slips.

Q. Did they tell you how long they had had that contract with the Juneau Lumber?

A. That I am not positive about. It seems like they said they had been certified in 1938 by the National Labor Relations Board for all types of longshore work in Alaska. [417] Now, I am not positive about that either. I think that is what they said.

Q. Let's not "think."

A. You asked me, and I said I am not sure.

Q. I don't want guesswork. You don't know whether they said it or not?

A. It is all guesswork.

Q. Let's not have any guesswork. Do you remember how long they told you they had the contract? A. No.

Q. Do you recall whether they told you it was for general longshore work?

(Testimony of William H. Flint.)

A. They said it was for loading all the lumber products of the Juneau Spruce Corporation.

Q. They told you they did longshore work up and down the Coast, didn't they? A. Yes.

Q. By the way, did you know Mr. Rutherford?

A. Yes.

Q. Did you know who he was? A. Yes.

Q. How long have you known Mr. Rutherford?

A. I worked one month for Mr. Ruthetford when he was here.

Q. Do you know when he left?

A. I think he left sometime about May, 1947; June, maybe. [418]

Q. Are you sure he left before June?

A. I am not sure.

Q. You worked for him a month; when?

A. From the first of April to the first of May, when this Company took over.

Q. During that particular period, did you know him, personally, I mean?

A. No; I knew who he was.

Q. Did you go to him and, as head of the Juneau Lumber Mills, ask whether they ever had a contract with the longshoremen?

Mr. Strayer: What time?

Q. Any time, did you ever ask Mr. Rutherford if his Company had a contract with the longshoremen for the longshore work?

Mr. Strayer: I object.

A. He left here before I came into the Union.

(Testimony of William H. Flint.)

The Court: Don't answer.

Mr. Strayer: I object. It doesn't make any difference.

Mr. Andersen: Counsel misapprehends what I had in mind. He says he made an investigation to find out if there ever was such a contract. He said he knew Mr. Rutherford. I asked him if he asked Mr. Rutherford.

Mr. Strayer: A contract with the Juneau Spruce, not [419] the Juneau Lumber.

Mr. Andersen: Not the Juneau Spruce; the Juneau Lumber.

Mr. Strayer: It is immaterial.

The Court: As counsel pointed out on direct he testified to having made an investigation or at least by his Union, I don't know if he participated in it, and that was one of the things they investigated, if I recall correctly.

Mr. Andersen: That is why I asked the question.

Mr. Strayer: As I understand the testimony was that representation was made to them that the longshoremen had a contract with the Juneau Lumber and that it had carried over to the new Company which had taken over. My objection is upon the ground that it doesn't make any difference whether there was, in fact, a contract between the longshoremen and the Juneau Lumber. The question is, was any contractual relation binding on the Juneau Spruce Corporation.

Mr. Andersen: Counsel, not intentionally, of course, misquoted the record. I asked the witness

(Testimony of William H. Flint.)

a short time ago what the longshoremen stated. The witness stated that the longshoremen came to the Union and said that for years they had a contract with the Juneau Lumber Mills and had always done that work and in their opinion it carried on to the Juneau Spruce, and they carried on under the old contract. The witness said "Yes, that is what they said." Now, I asked [420] if he asked Mr. Rutherford, the former President—as far as I know he was the President of the Juneau Lumber—whether he asked Mr. Rutherford whether there ever was such a contract.

The Court: Objection overruled.

Q. Did you, sir? A. I did not.

Q. Were you on this investigation committee?

A. When I said investigation——

Q. Just answer my question. Were you on this investigation committee?

A. Actually, there was not an investigation committee.

Q. There wasn't an investigation committee? Well, maybe I am wrong. In my notes—but you say the I.W.A. made an investigation. Do you know who made the investigation?

A. Who made it? All of us. No one was elected to any investigating committee or were appointed to any investigating committee.

Q. The Union didn't do it officially—everybody did it? Is that what you mean to say?

A. Investigating? The committee wasn't for

(Testimony of William H. Flint.)

that purpose, but there was a Negotiation Committee which negotiated with the longshoremen.

Q. You say "nobody was appointed, everybody did it on their own." Which do you mean?

A. Well, the Negotiation Committee was trying to settle the [421] dispute and took it upon themselves to find out.

Q. Were you a member of the Committee?

A. Yes.

Q. Tell me what you did to find out whether there was any such contract with the Juneau Lumber.

A. I asked Local 16 and Mr. Albright to show us the contract where it showed they had that work. They never did.

Q. You asked them to show you a contract between the Juneau Lumber and the longshoremen?

A. That is right.

Q. Did you go to the Waterfront Employees, or is it the Dock Employers?

A. Something like that.

Q. Did you go to them? A. No.

Q. Did you go and ask the Company whether its predecessor Company had a labor contract regarding longshoremen?

A. No; I asked the longshoremen that.

Q. You didn't go to the Company and ask them, you didn't ask the Juneau Spruce if they knew whether the Juneau Lumber ever had a contract with the longshoremen?

(Testimony of William H. Flint.)

A. I didn't anyway.

Q. All you did then was ask the longshoremen, is that correct? A. Right.

Q. Did you ask them for a contract between the Juneau Spruce [422] and the longshoremen?

A. Between the Juneau Lumber and the longshoremen.

Q. Who did you ask about that, please?

A. The various members; Wukich, Joe Guy—all the rest in the Local meeting.

Q. You asked practically every member of Local 16 if they ever had such a contract?

A. Seven or eight of them.

Q. And they said they didn't?

A. They didn't show it to me, wouldn't or something.

Q. Didn't they tell you there was a contract on the Pacific Coast? Didn't they tell you there was a Coast-wise contract for longshoremen?

A. Yes.

Q. And that was the contract that was in effect between the Juneau Lumber and the longshoremen here? A. Yes.

Q. And did you go down to the Northland Transportation Company, a large outfit here, and ask if they knew anything about it?

A. No. I felt if there was no contract directly with the Juneau Lumber Mill it was of no concern.

Q. You mean the Juneau Spruce?

A. The Juneau Lumber Mill.

(Testimony of William H. Flint.)

Q. You took their word for it they had a Coast-wise contract? [423]

A. I took their word for the contract with the Juneau Lumber Mills.

Q. Did you ever go to one of their meetings and ask to see their contract?

A. We are not allowed to their meetings.

Q. To their Hall, or ask for or where you could get a copy? A. I asked the officers.

Q. What official? A. This Mr.——

Q. Mr. Wukich?

A. He was President at that time.

Q. What did he say?

A. He couldn't show me a copy.

Q. What did he say?

A. He said they had a Coast-wise agreement.

Q. And didn't have a copy; is that what he said?

A. I imagine if he had a copy—yes.

Q. Did he say he personally didn't have a copy of it or not?

A. I don't recall if he did or not.

Q. When he told you they had a Coast-wise contract you took his word for it, didn't you?

A. Yes.

Q. You heard about the Coast-wise contract and took his word for it, is that right?

A. Right. [424]

Q. And I assume you talked to other members of Local 16, had a conversation about the same thing; isn't that correct?

(Testimony of William H. Flint.)

A. I don't quite understand your line of questioning.

Q. You talked to other officers of Local 16 the same as you did to Mr. Wukich? A. Yes.

Q. And the answers and questions were about the same as with Mr. Wukich?

A. That is right; that they had a Coast-wise agreement.

Q. And the fact that Local 16 didn't personally have a contract with the Juneau Lumber Mills; you felt that it wasn't a good contract?

A. Yes.

Q. That is where the difficulties arose?

A. Yes.

Q. You are practicing a little law on the side, is that right? A. More or less.

Q. So that was the reason you finally took the position in view of the fact that Local 16 here didn't directly have a contract with the Juneau Lumber. You didn't feel that you fellows had to pay any attention to it?

A. We felt they misrepresented to us when they told us they did have a contract with the Juneau Lumber Mills. [425]

Q. Did you tell them anything about that at any other time—let me withdraw that. It doesn't make much sense. When did your Union, if you put it that way, come to that conclusion?

A. We came to that conclusion on the evening of July 2.

(Testimony of William H. Flint.)

Q. Before coming to that conclusion or immediately after that conclusion, did you discuss it with any members of Local 16? A. No.

Q. Did you ask any members of Local 16 to explain it to you?

A. We already had asked them if they had a contract. They said "No." There was no more explaining to do.

Q. When was that?

A. During this whole dispute we asked for this contract.

Q. They told you they never had a direct contract. They told you they had a Coast-wise contract; isn't that what they told you?

A. First they told us they had a contract with the Juneau Lumber. They didn't mention the Coast-wise contract. Afterwards all they could show us was a Coast-wise contract.

Q. Did they show it to you?

A. They might or might have not, I can't recall for sure.

Q. When did they first tell you they had a contract with the Juneau Lumber Mills? [426]

A. April 1.

Q. How long a period of time elapsed before you went to Mr. Wukich? Was he about the first man you talked to about the contract?

A. He was at the meeting.

Q. Which meeting?

A. We met about every day and about twice a day.

(Testimony of William H. Flint.)

Q. When did the question of a contract come up again?

A. After we got the idea something was wrong.

Q. When was that?

A. I imagine about a week or so after it happened.

Q. After the picket line?

A. After the picket line went up.

Q. You talked to Mr. Wukich?

A. Right. He was head of the Committee.

Q. You don't remember whether he showed you a contract? A. I don't recall.

Q. He may or may not? A. That is right.

Q. Didn't they tell you they worked under that contract for the Juneau Lumber Mills for years?

A. After the picket line went up.

Q. On April 1 didn't they tell you they had a contract and had had a contract with the Juneau Lumber Mills and always did the longshore work for them? [427]

A. With the Juneau Lumber.

Q. And April 1 they told you they had a contract? A. Yes.

Q. And they always told you they had that contract? A. Yes.

Q. You found that statement to be quite true, didn't you; that they always had a contract and always did the work for the Juneau Lumber Mills under that contract?

(Testimony of William H. Flint.)

A. No; I have never seen a copy yet of that contract with the Juneau Lumber Mills.

Q. Which contract?

A. The one they referred to April 1 which they had with the Juneau Lumber Mills. In the National Labor Relations Board hearing they brought up a Coast-wise agreement. That is the closest to a contract—of a contract with the Juneau Lumber Mills.

Q. Did you see it then?

A. I believe I did.

Mr. Andersen: I am about to start a new subject.

The Court: Go ahead.

Mr. Andersen: Shall we continue?

The Court: We will continue for a while.

Q. I assume that sometime after this business started here, after April 10, that all of the labor people here were quite anxious to get this settled?

A. Absolutely.

Q. You were, of course, and you had several meetings and discussed it with several people. You mentioned discussing it with Mr. Burtz, an officer of your International Union, is that true?

A. That is right.

Q. You say you discussed settling it with Mr. Garst? A. Yes.

Q. And also Mr. Albright, described as a member, International representative of the International Longshoremen's and Warehousemen's Union; is that true? A. Right.

(Testimony of William H. Flint.)

Q. When did you first meet Mr. Albright?

A. I believe it was May 8, the same day as I met Mr. Burtz.

Q. May 8 or 15? I have the fifteenth down here.

A. No; May 8.

Q. At that meeting was any suggestion made about arbitrating this difficulty?

A. I am quite sure that was the meeting. I am not positive—that was the meeting where Mr. Burtz——

Q. Suggested it be referred to the C.I.O.?

A. I think so.

Q. And if it was referred to the National C.I.O., that it would be forever and a day and it would be better to have the Local settle it? [429]

A. I am not sure if that is his answer.

Q. Wasn't that his answer?

A. I am not sure.

Q. Weren't you there? A. Yes.

Q. Can't you recall? A. Not every word.

Q. This meeting by yourself, Mr. Albright, Mr. Burtz—by the way, how did you happen to meet Mr. Albright?

A. I met him in the morning of May 8. I was with—I met him at the Baranof Hotel. I think I was with our Regional C.I.O Director up here at that time and was introduced.

Q. Who was that? A. Chris Hennings.

Q. You were introduced to Mr. Albright?

A. I am quite sure by Chris Hennings.

(Testimony of William H. Flint.)

Q. You arranged for the meeting of the eighth?

A. Yes.

Q. Who did? A. I did.

Q. You called Mr. Albright, did you?

A. After our official arrived from Portland that same day, Mr. Burtz, why we both contacted Mr. Albright and had Mr. Albright contact Local 16.

Q. And you wanted Mr. Albright to set in a meeting and discuss [430] a settlement and get his idea and advice on it? A. That is right.

Q. How long did that meeting last?

A. I imagine an hour, off hand.

Q. In this meeting, as I recall your testimony, this is the meeting at which nothing was drawn up?

A. That is right.

Q. Nothing was drawn up?

A. Nothing was drawn up.

Q. Mr. Albright—by the way, was anybody else there with Mr. Albright or was he there alone?

A. He had the Local 16 boys with him.

Q. Who was spokesman for Local 16 there?

A. Mr. Albright seemed to be speaking for both.

Q. Mr. Albright did the speaking?

A. Right.

Q. Did he tell you Local 16 asked him to attend the meeting?

A. No; not that I recall, because I asked him.

Q. Did you ask him to get ahold of Local 16 and attend the meeting? A. Right.

Q. And for the purpose of seeing if Mr. Albright could settle this dispute?

(Testimony of William H. Flint.)

A. I felt——

Q. I mean, is that what you told him? [431]

A. I don't know word for word. It is almost a year ago.

Q. I don't want it word for word, just the bare facts. Did you meet and say something like this: "Mr. Burtz of our International is here in town and Mr. Garst. Suppose you get ahold of Local 16 and come on over and see what we can do about settling this trouble." Is that about it?

A. No. Mr. Albright and I were together when we met Mr. Burtz. Mr. Burtz asked for a meeting. I turned to Vern and asked if he could get Local 16 and try to settle the dispute.

Q. And Mr. Albright sat in the meeting? Did he offer any suggestions about how it could be settled? A. Yes.

Q. Did he say anything at all? A. Yes.

Q. Did the members of Local 16 talk?

A. Yes.

Q. About some possible basis of settling the dispute, is that correct? A. Yes.

Q. How long did that meeting last?

A. About an hour.

Q. One hour; and that letter, could I see it please? Exhibit 6. Then you had another meeting about a week later?

A. About a week, I imagine. [432]

Q. Did you see Mr. Albright in the meantime, if you recall?

(Testimony of William H. Flint.)

A. I think I did; I imagine I did.

Q. You don't recall anything, a meeting that occurred at that time, but the next talking was the fifteenth?

A. I was with Mr. Albright practically every day from the eighth day of May until towards the fifteenth.

Q. During this time he was trying to settle the strike—that was all he was talking about?

A. Yes; that is right.

Q. On the fifteenth you had this meeting where this letter of May 14 was discussed; is that correct?

A. That is right.

Q. Do you know if you requested that this letter be written? A. No.

Q. Do you know who requested it be written?

A. Mr. Albright.

Q. Requested that the letter be written up?

A. Yes. Mr. Burtz explained what had happened previously to my coming there.

Q. What was explained?

A. He explained that Mr. Albright asked that Mr. Garst, who was neutral, go to the Company and get a letter of jurisdiction.

Q. Requested that Mr. Garst go to the Company to get a letter of jurisdiction about a possible settlement of the dispute? [433]

A. A letter of jurisdiction as to what the Company felt each Local should have.

Q. And that was this letter, Plaintiff's Exhibit

(Testimony of William H. Flint.)

6, which you discussed there at that time, is that right? A. Right.

Q. How long did this meeting last?

A. That meeting started out about two thirty in the afternoon—at least that is when I arrived—and went on, off and on, until four o'clock the next morning.

Q. When did you leave? A. Four o'clock.

Q. In the morning?

A. Yes; that is right.

Q. That was a long time to try and settle a dispute, wasn't it? A. It certainly was.

Q. Now did you have after that, did you have another meeting? When did Mr. Albright leave that meeting?

A. He left the meeting in the afternoon of May 8.

Q. We are now on the fifteenth. I am talking about the meeting of the fifteenth.

A. I meant the fifteenth; fourteenth or fifteenth. He left the meeting the first time about oh, I would say about half past four.

Q. Morning or afternoon? A. Afternoon.

Q. When did that meeting start, the meeting of May 15?

A. That is the one that started in the afternoon.

Q. About four o'clock, and when did Mr. Albright leave the meeting?

A. It started at half past one or two and about two thirty I came in and he left about four or half past.

(Testimony of William H. Flint.)

Q. Did he come back any more?

A. We moved the meeting from our hotel to his hotel, to the Gastineau.

Q. When did you move the meeting?

A. We all got together about seven o'clock in the evening.

Q. Is that when the letter was discussed, Exhibit 6, or had it been discussed before?

A. Before and at that time also.

Q. And then you continued to discuss ways of settling the strike or lock out, is that right?

A. Yes.

Q. Nothing was accomplished that night, was it?

A. No.

Q. I assume the members of Local 16 there were anxious to work out some basis of settling it?

A. I wouldn't say "anxious."

Q. They talked about ways and means of settling the difficulty? A. They talked one way.

Q. Did they make any suggestions?

A. Only one. They all made the same one.

Q. Did you make any suggestions to them?

A. I don't recall if that is the meeting where I made a suggestion about a Union Shop election or not. It may have been.

Q. At the meeeting did you make any suggestions to the longshoremen about how the strike could be disposed of?

A. I don't know. I don't recall.

Q. Now, at the meeting of May 8, did Mr. Al-

(Testimony of William H. Flint.)

bright at that meeting suggest that the matter of arbitration be taken up and have some local person arbitrate the matter?

A. I don't recall. He may have.

Q. On May 8. Did he make the same suggestion on May 15?

A. He might have. I don't know.

Q. Mr. Albright made that suggestion quite a few times?

A. I don't recall him ever making it; no.

Q. You say he may have; don't you have any——

A. That was a year ago. There have been so many suggestions. He may have, but at the same time I can't swear to it.

Q. Somebody suggested arbitration, but you don't know who?

A. If I say "No," then I know. There were so many ways and suggestions; I can't swear to all of them. Some of them I can.

Q. I am only talking about one statement, one suggestion. I [436] asked you if Mr. Albright at the meeting of May 8 made a suggestion that the matter be submitted to arbitration. Didn't he say "Let's get the Company and everybody involved and sit down before some impartial person in Juneau and get it settled in a hurry"?

A. I don't recall.

Q. May 15 didn't he suggest that the matter be submitted to arbitration? A. I don't recall.

Q. Did you attend the Mayor's fact finding committee? A. No.

(Testimony of William H. Flint.)

Q. Did you ever recall hearing Mr. Albright say anything about arbitration?

A. No, I don't think I did.

Q. Who suggested, as you testified a little while ago, that the matter be referred to the National CIO for arbitration there?

A. That was made by our representative, Virgil Burtz.

Q. To whom did he say that?

A. Mr. Albright.

Q. And did Albright say anything about that?

A. He said "No."

Q. What else did he say besides "No"?

A. I just can't recall. I know the end result was "No."

Q. Didn't he say, referring to the National CIO, "It will [437] have to wait the outcome of an Executive Board meeting of the National CIO, which will take forever and a day. This is a Local dispute; let's get it settled by local arbitration." Didn't he say that or words to that effect?

A. I can't swear to that.

Q. Did he say that or a lot of different words?

A. A lot of different words.

Q. You wouldn't say he didn't say that?

A. No, I couldn't say either way.

(Whereupon the jury was duly admonished and Court adjourned until ten o'clock a.m. May 4, 1949, reconvening as per adjournment with all parties present as heretofore and the jury

(Testimony of William H. Flint.)

all present in the box; whereupon the trial proceeded as follows:

The Court: You may proceed.

Mr. Strayer: May I inquire if counsel has the records that we requested?

Mr. Andersen: So far we have been unable to find any.

Mr. Strayer: Do you have the name of the Local Secretary?

Mr. Andersen: There is no Secretary of the Local at this time.

Mr. Strayer: Who has charge of the records?

Mr. Andersen: I think Mr. Pearson, but I will check [438] and let you know.

(Whereupon the witness William H. Flint resumed the witness stand and the Cross-examination by Mr. Andersen continued as follows:)

Mr. Andersen: Will you read the last question, Miss Reporter?

Court Reporter: "To whom did he say that?" A. "To Albright." Q. "And did Albright say anything about that?" A. "He said 'No'." Q. "What else did he say besides 'No'?" A. "I just can't recall. I know the end result was 'No'." Q. "Didn't he say, referring to the National CIO, 'It will have to wait the outcome of an Executive Board meeting of the National CIO, which will take forever and a day. This is a Local dispute; let's get it settled by local arbitration.' Didn't he say that or words to that effect?" A. "I can't swear to that." Q. "Did

(Testimony of William H. Flint.)

he say that or a lot of different words?" A. "A lot of different words." Q. "You wouldn't say he didn't say that?" A. "No, I *could* say either way."

Q. Over the night, has your memory been refreshed as to what Mr. Albright said at that meeting? A. No, it hasn't.

Q. During all that conversation, which was May 8 or 15, the date is immaterial for the purpose of the question, do you recall any conversations with Mr. Albright in which [439] Mr. Albright referred to the possibility of arbitration?

A. I don't think so.

Q. Do you recall any conversation at all with Mr. Albright, whether the conversation was with you or you were simply present, and where Mr. Albright made a general statement so far as Local 16 was concerned, that it would consent to arbitration, negotiation, mediation or conciliation by the Government or a resident of Juneau agreeable to the parties?

A. That question—you have a double question there. To the first part, of outside conciliation, I believe the answer was always "No," but so far as local conciliation, I believe they would have agreed to that.

Q. I am asking you during any conversation where you were present, whether you participated in the conversation or not, did any representatives of Local 16, including Mr. Albright, make any statement that they would at any time consent to arbitration of this dispute?

(Testimony of William H. Flint.)

A. As far as I can recall——

Q. They did? I am asking if they said that.

A. I would say "No."

Q. Are you stating your opinion, that they would have agreed to local arbitration?

A. By a local conciliator; yes.

Q. Did they say that? [440]

A. That I am not positive of.

Q. On what do you base that conclusion when you say they would have agreed to arbitration or conciliation?

A. Because all during this dispute we would get together and talk, perhaps in a restaurant, or passed or met one or the other and it always seemed to be the idea behind the conversation that they could have conciliation with the Company. For instance, we would see a Labor Department man here in Juneau or someone else locally, but I don't think it came up, the fact of consenting to an arbitration committee of outside interests.

Q. You understand from everything that was said during all the time of this strike, whether Mr. Albright was here or not, so far as Local 16 was concerned, at all times they were understood by you as being willing to have the matter arbitrated?

A. I would say "No" to that.

Q. I beg your pardon?

A. My answer to that is "No."

Q. Part of the time were they agreeable to arbitration?

(Testimony of William H. Flint.)

A. I would say "No" to that question.

Q. Why do you say "No" to that?

A. They would go for local conciliation but not outside.

Q. I am talking about local.

A. Then I would say "Yes." [441]

Q. Do you—whether or not it was local conciliation—by conciliation do you mean arbitration?

A. I usually have found that the words "arbitration" and "conciliation" are used in almost the same sense of the word.

Q. "Conciliation," for the purpose of this conversation, will mean "arbitration"; is that satisfactory to you? A. Yes.

Q. You discussed arbitration — conciliation— with Local 16 on several occasions?

A. Yes, sir.

Q. You discussed arbitration with a local Labor Department man? A. Yes.

Q. Who was that? Do you know his name?

A. Whoever was in the Labor office.

Q. A Territorial official?

A. Territorial Commissioner of Labor; Henry Benson or his assistant.

Q. Did you discuss arbitration with the Company? A. Yes.

Q. In the presence of representatives of Local 16? A. No.

Q. Did you ever discuss arbitration with the Company in the presence of Mr. Albright? [442]

(Testimony of William H. Flint.)

A. Yes, I did. I will take that back. The other question—I did discuss it a little with Mr. Albright and one of the Local boys.

Q. When was that?

A. I would say about November 15, perhaps.

Q. Of 1948? A. 1948.

Q. Then you have discussed the possibility of arbitration with the Company, have you?

A. Yes.

Q. And you have discussed arbitration with representatives of Local 16? A. Yes.

Q. But you never discussed arbitration with representatives of the Company when representatives of Local 16 were present; that is my understanding?

A. Only that once I just mentioned, last year, of November 15, or whatever it was.

Q. Were representatives of the Company present then? A. Yes.

Q. And that was when?

A. November 15; somewhere in there—the middle of November sometime.

Q. Prior to that date you had not discussed the matter of arbitration with both parties together, that is, the [443] Company and Local 16?

A. I don't believe I did.

Q. And during all that time Local 16 was willing to arbitrate?

A. With a local conciliator; that is right.

Q. And the Company refused to arbitrate?

(Testimony of William H. Flint.)

A. Yes.

Q. And November 18, or whenever it was—November 15 or 18 of last year—Local 16 was still willing to arbitrate, was it? A. Yes.

Q. And no arbitration meeting has ever been held, has it?

A. Only between us and Local 16.

Q. You people had agreed among yourselves they could do the work, so it was not a matter to be arbitrated, but so far as Local 16 and the Juneau Spruce Corporation, they never sat down to arbitrate because the Company wouldn't sit down to arbitrate; that is true? A. Only once they did.

Q. Did they ever sit down to arbitrate?

A. I don't know what words—they sat down in one group and talked it over.

Q. That is negotiation—did they ever agree to arbitrate? A. Who?

Q. Juneau Spruce and the ILWU, although you were not a [444] necessary party.

A. All three parties to arbitrate, you mean?

Q. Yes.

A. As far as I know, all three parties never agreed at the same time anyway.

Q. Do you know of any time that the Juneau Spruce Mills agreed to arbitrate this whole issue?

A. I don't think they ever did; no.

Q. Never did? A. No.

Q. They refused on November 15 of last year to arbitrate, didn't they?

A. I couldn't answer "Yes" or "No" to that

(Testimony of William H. Flint.)

directly, because it was a roundabout method there and——

Q. In any event——

Mr. Banfield: I object to having counsel cut off the answers in the middle and ask for an answer. He said he couldn't answer "Yes" or "No" and wanted to state why. He has the right to do that.

Mr. Andersen: Will you read the answer, Miss Reporter, so he could complete it?

Court Reporter: "I couldn't answer 'Yes' or 'No' to that directly, because it was a roundabout method there and——"

A. That was a case of where their Local 16, our Local and the Company met and the Company did agree that if Local 16 [445] and our Local came to some agreement over jurisdiction at that time that then they would look the agreement over and see if they would agree to it.

Q. I am talking about arbitration, Mr. Flint. You understand what arbitration is, don't you?

A. Well——

Q. That is where two parties to a dispute agree upon a person, like a judge, to settle it. The Juneau Spruce on April 18 didn't agree? A. No.

Q. Your Union and Local 16 were willing to arbitrate at the time, weren't you? A. No.

Q. When did you change your mind? You stated a moment ago——

A. I don't believe I said on that time where we were willing to arbitrate——

(Testimony of William H. Flint.)

Q. Did you change your mind about arbitration?

A. Our whole Local changed our minds after they went back to work.

Q. You weren't willing to arbitrate it after that?

A. No.

Q. You were never willing to arbitrate this dispute? A. Yes.

Q. And you are not now?

A. I can speak for myself and not speak for the Local. [446]

Q. So far as you personally are concerned——

A. From what I personally and from my Local —their opinion is that they are not, either, according to their last vote.

Q. Just to button this up, the Juneau Spruce Corporation never at any time agreed to arbitrate this matter? A. As far as I know they didn't.

Q. And as far as you know Local 16, from the time the dispute started until this moment, had always expressed willingess to arbitrate?

A. I can't answer "Yes" or "No" on that either.

Q. At anytime did they ever refuse to arbitrate this, as far as you know?

A. Like I say, they did consent to any local conciliation, but not to any outside conciliation.

Q. Did they ever refuse to have an Alaskan arbitrator arbitrate this dispute? A. No.

Q. With respect to this barge, you said the barge was loaded sometime or other, this barge you saw at Tacoma?

(Testimony of William H. Flint.)

A. I would say the barge was loaded—it was in the month of August sometime.

Q. August of 19——? A. 48.

Q. 48. And what business took you to Tacoma?

A. At that time I went to the International convention in Portland for IWA men.

Q. And you went over to Tacoma, did you?

A. Also; yes.

Q. And you say you saw a barge there?

A. The barge was there; that is right.

Q. And there was lumber on the barge?

A. Lumber on the barge.

Q. How long did you stay there, by the way?

A. On the way to Portland I stopped in Tacoma for one afternoon and on the way back I stopped in for, probably I was there eight hours, I imagine—six or eight hours.

Q. Over how long a period, a day? Did you see it on the same day or successive days or when?

A. When I went down, or the second time I was in Tacoma, I saw it.

Q. In other words you saw it on one occasion, is that correct? A. Yes.

Q. Just one occasion? And that was when?

A. That would be about October the 16th or 17th; I am quite sure.

Q. Did that barge have the name of Juneau Spruce on it, if you know, or was it—— [448]

A. I believe that was—it had the name of the company who they get their barges from sometimes. I can't recall what company it is.

(Testimony of William H. Flint.)

Q. Are you trying to tell us you recognized the barge?

A. As the one that left here; that is right.

Q. During the time from May 8, when I understand you first met Mr. Albright, how many discussions did you have with him?

A. Like I said yesterday, we had quite a number of regular meetings, planned meetings which we called, and I would meet him on the street several times a day.

Q. The street things would be a sort of curbstone conversation of a momentary nature?

A. That is right.

Q. The others are the ones you would schedule with Local 16? A. That is right.

Q. And sometimes Mr. Albright would be there and sometimes he would not be there?

A. As a rule he was there. Sometimes he wasn't.

Q. When was the last meeting, do you recall?

A. With Mr. Albright?

Q. The last meeting Mr. Albright attended, so far as you can recall.

A. On November, about the end of November I think.

Q. Of 1948? [449] A. 1948.

Q. Now, Mr. Albright—you said he left around the end of May, didn't he?

A. As I recall he did leave for a short while.

Q. He left around the middle of May and didn't come back until around the first part of July, isn't that correct?

(Testimony of William H. Flint.)

A. I don't know when he came back.

Q. Do you recall seeing him during the month of June at all?

A. I don't think I did. I couldn't swear I did.

Q. Do you recall seeing him during the month of July? A. Yes.

Q. Do you recall seeing him more than once? There was a celebration here at that time, the Fourth of July?

A. The Fourth of July; that is right.

Q. Do you recall seeing him during the period of that celebration?

A. No, I didn't during the celebration.

Q. Do you have any definite recollection of seeing him more than once during the month of July last year?

A. I recall seeing him after one of our regular Local dates when we meet. I saw him after that meeting. That must have been about the middle of July.

Q. One of your meetings? An IWA meeting itself? A. Right.

Q. Or an IWA meeting with the ILWU 16?

A. IWA.

Q. That was in July? A. Yes.

Q. You just saw him?

A. I talked to him.

Q. With some member of Local 16 also?

A. He was sitting with a couple of members, if I recall correctly.

Q. Where?

(Testimony of William H. Flint.)

A. At the CIO Hall lobby.

Q. You sat down and talked with him?

A. No, I walked up and talked to him for a few minutes.

Q. Do you recall what the discussion was about then? A. Yes.

Q. What did you talk about then?

A. There had been an article in the Empire, our local newspaper here, and in this article it stated some things I had said about Albright which I had not said, and Albright went on the radio and said they were wrong.

Q. You wanted it corrected?

A. I went over to Albright and said that they were wrong and had put a correction in myself.

Q. That was in July? I guess that isn't an important aspect. A. Not that I know of.

Q. That was the last time you saw him in July?

A. I can't recall. I don't know if I saw him again. I might have.

Q. You have no recollection of seeing him and discussing with him this dispute in July, except that one discussion? A. That is right.

Q. Do you recall seeing him in the month of August, 1948? A. Not that I recall of.

Q. Do you recall seeing him in the month of September?

Mr. Banfield: If the Court please, I object to this line of questioning. I can't see any importance as to what months they were. He testified he met with him any number of times, but a question as

(Testimony of William H. Flint.)

to every month in the year, just when Mr. Albright was here and when he wasn't here—I can't see that it has any materiality.

The Court: He has a right to find out what this man's dealings were, so to speak with Mr. Albright, but it seems to me instead of asking the witness as to specific months, wouldn't it be just as well to ask as to the intervening period, July November?

Mr. Andersen: Maybe I have a different idea in mind. I don't want to be presumptious.

The Court: Objection overruled.

Q. Did you see him in the month of August?

A. No, so far as I recall.

Q. Did you see him in the month of September?

A. As far as I know I didn't.

Q. You saw him how many times in November?

A. Let's see—I would say about four times.

Q. And after November until this trial began, did you see him at all?

A. Not that I can recall.

Q. As I understand it then, on your direct examination, as I understood it—I may have been in error—you talked with him, met with him, about one hundred times. Of course that isn't correct?

A. I was using that phrase to mean all the times we met, on the street, and all the times we met—it might have been one hundred times, maybe not.

Q. You only had a few conversations with Mr. Albright regarding this situation at the Juneau Spruce, isn't that true?

(Testimony of William H. Flint.)

A. Every time I met Mr. Albright we talked about this, I am quite sure.

Q. Of the one hundred conversations you had with him you can remember about four where you really discussed this problem?

A. Where I can come down and get an actual date or——

Q. Or the substance.

A. I know I talked to him.

Q. That is about four conversations which you can recall and having some bearing on the subject discussed here, and [453] each of these situations were—strike that. On each of these four occasions that you mentioned, he was with representatives of Local 16, I assume?

A. You mean in the month of November?

Q. Pardon me, the four times you met with him where this general situation was discussed, was he with representatives of Local 16?

Mr. Strayer: Your Honor, the witness testified there were more than four times in November alone.

Mr. Banfield: Counsel is specifying four times out of the one hundred he is talking about.

The Court: I assume he embodied in the questions what had already been testified to by the witness, but if the form of the question is unwarranted I guess the witness can call his attention to it.

A. I would like to, your Honor.

The Court: Go ahead.

A. I testified I met Mr. Albright during the month of November four times.

(Testimony of William H. Flint.)

Q. You mean you testified a few moments ago that you talked with him once about the eighteenth of November and maybe another four times you talked with him about the discussion here?

A. You asked me how many more times in November.

Q. Tell me how many times you met with him in November and [454] discussed this dispute with him?

A. I met him the first time in the Company's office.

The Court: All he asked was the number of times. Just answer that.

A. Five times.

Q. All right. In November, where did you meet the first time and give me the date if you can, or the approximate date?

A. In the Company's office about the middle of November.

Q. Who was present at that time?

A. Mr. Albright and one of the Local boys of his Local and our manager, Mr. Schultz and myself and one of our Local Shop Stewards.

Q. Is that the time—strike that. And when is the next time you met him in November?

A. The next time was, I am quite sure, Thanksgiving Day in the Longshoremen's Hall.

Q. Thanksgiving? A few moments ago you testified it was November 15 or 18; is that correct or incorrect?

(Testimony of William H. Flint.)

A. That was in the Company's office.

Q. What was the date of your first meeting?

A. About the 15th or 18th or around the middle of November.

Q. The next meeting was Thanksgiving—dinner or something?

A. No; it was a meeting in the Longshoremen's Hall.

Q. Did you discuss this dispute with him at that time? [455] A. Yes.

Q. When was the next time?

A. In his hotel room in Juneau, in the Gastineau Hotel. I am not quite sure but I think it was a matter of a day or so later.

Q. Do you recall what was discussed then?

A. We talked about this dispute.

Q. When was the next time you met him?

A. The next time I met him all alone in the Gastineau Hotel with one of my Local Shop Stewards.

Q. Do you recall what was discussed then?

A. The same thing, this dispute.

Q. And the next time?

A. A couple days after that. They were a few days apart, each meeting.

Q. Do you know when you met him again?

A. That was our last meeting, I think. I am quite sure it was.

Q. The last question which brought up this was, I said during the entire period of time, I said you

(Testimony of William H. Flint.)

mentioned you had about one hudred meetings and you said that included street meetings and everything. I understood you to say that there were one hundred times you saw him and a few minutes later you said there were about four, where you actually sat down and discussed this. Did you understand that? [456]

A. No, I did not.

Q. These times you mentioned—how many meetings were there where you sat down and really discussed this problem?

A. You mean from the start of the dispute until the present time?

Q. It couldn't be before May 8.

A. That is right. We actually sat down and discussed this at a called meeting perhaps fifteen or twenty-five times.

Q. And during all these meetings Mr. Albright, the theme of what he was saying was, so far as Local 16 was concerned, they wanted arbitration, conciliation or negotiation in some manner to try and end it on that basis?

A. I can't answer it "Yes" or "No."

Q. Answer it one way and then explain it.

A. I can say "Yes" and then I can say that from start to finish of this dispute that their basis——

Q. I am just talking about from May 8.

Mr. Banfield: Let him answer.

The Court: I think he should be allowed to finish.

A. Yes; and then as I say, from start to finish

(Testimony of William H. Flint.)

Albright and Local 16 were willing to have this arbitration, or sit down and negotiate it on one basis only—that they get the work of loading lumber on barges at the Juneau Spruce, and no other method would work, arbitration or anything else. They would sit with anybody at any time and tell [457] them they wanted to load the barges at the Juneau Spruce.

Q. Have you completed your answer?

A. I have.

Q. Did I understand you to say—I will put it another way. The dispute at the Juneau Spruce was just on—on April 9, of 1948, the dispute was who was going to load the barges. Wasn't that the dispute?

A. Who was going to load barges?

Q. That was the only issued involved, wasn't it?

A. As far as I know it was; yes.

Q. When Local 16 talked about arbitrating, didn't you understand that by arbitrating this business, the only question for arbitration would be to decide which men would load the barges?

A. On arbitration, I would say "No."

Q. What is your idea of arbitration, Mr. Flint?

A. I would say arbitration—if I asked for something and another fellow asked for something, and we sat down and talked it over, we would both have to give a certain amount. That is my idea of arbitration.

Q. That is negotiation. I don't like to talk to a person unless we understand the same terms. Let me explain.

(Testimony of William H. Flint.)

Mr. Andersen: I am sorry, may it please the Court.

Q. If you were the longshoremen and I were the I.W.A. and you and I both agreed that the longshoremen would load the [458] barges, then there would no longer be an argument about it, so far as we are concerned. A. True.

Q. There would be nothing to negotiate, nothing to arbitrate; isn't that so? A. Right.

Q. Because we are in agreement. If the Judge up there, make him the Spruce Company for a moment, if you and I agreed who would load the barges and the Judge, the Spruce Company who really has no interest in it, refused to let the longshoremen load the barges and agreed to arbitrate, the question would be—wouldn't it be who would load the barges? A. That would be the question; yes.

Q. So, when you were talking about arbitration a short time ago, didn't you understand the question would be who would load the barges; isn't that what you understood?

A. No; I understood who—or where both parties helped in loading the barges, they would have to come to an agreement.

Q. Didn't you understand that whatever the arbitrator said would be binding on both parties?

A. I didn't know that the arbitrator's ruling was the last word in any dispute until all of the ones in the whole dispute had agreed to it, in the end, after he had made [459] a ruling, and then if they all agreed to it, it would be what would go.

(Testimony of William H. Flint.)

Q. Local 16 said "Let's appoint an arbitrator, put all the facts before him. Whatever the arbitrator says will be binding on us." Didn't they say that? A. Words to that effect; yes.

Q. So the question of who would load the barges would be referred to an arbitrator, where the Juneau Spruce Company and the longshoremen—and not you people, because you already agreed that the longshoremen could do it—would state facts to the arbitrator and the arbitrator would say they would load them, or either that the longshoremen would not load them. You understand that clearly, don't you?

A. Part I don't understand. I never heard Local 16 say that if the arbitrator said they would not load them, that they would consent to that.

Q. Did you ever ask them the question, or did you talk to them, not knowing what arbitration meant, or conciliation meant, or mediation meant—do you understand those terms?

A. I thought I knew them before I got up here.

Q. I think you did, too, when I talked to you before about the longshoremen agreeing to arbitration and the Company refused. You knew what the Company was refusing to arbitrate, the question of whether the longshoremen would load [460] the barges or not; isn't that true? A. Yes.

Q. Of course it is. It is the Company who refused to arbitrate, not the longshoremen; isn't that right?

(Testimony of William H. Flint.)

A. I couldn't answer that "Yes" or "No" either.

Q. Answer it one way and then explain it.

A. I would say "Yes," that they would not arbitrate it.

Q. Who, the Company?

A. The Company, but at the same time the Company knew that Local 16 would consent to only one end result and that is that they would load the barges.

Q. You are getting me confused now. Are you trying to tell us that the longshoremen—putting it another way, are you trying to tell me now that the Spruce Company refused to arbitrate the question of who would load the barges, but at the same time that the longshoremen said "We will consent to arbitration provided we win." Is that what you are trying to tell me?

A. That is about the size of it. I would like to explain some, your Honor.

The Court: You can explain.

A. I would like to know—ask anyone in this courtroom—how you can have any kind of arbitration——

Q. You are not allowed to ask questions. You can explain your answer, but not interrogate the audience. [461]

A. The way arbitration has been used in this dispute from start to finish; there can be no arbitration when all parties concerned want one end result, when the longshoremen want to load the barges and

(Testimony of William H. Flint.)

the Company wants the I.W.A. to load the barges, there can't be any arbitration on either side.

Q. There can't be? A. No, there can't be.

Q. Why do you say that?

A. I don't see how it can be.

Q. You had no argument on April 10?

A. April 10; no.

Q. You said you would let the longshoremen load the barges? A. Yes.

Q. And the Company said they wouldn't?

A. Yes.

Q. The longshoremen said they wanted to, and they said the I.W.A. is agreeable to us loading the barges; that is correct, isn't it?

A. Yes, that is right.

Q. The only question would be who would load the barges? A. Yes.

Q. We will take all your answers together and I think we can skip this subject. Then in one of these meetings you referred to, to button this aspect of the case up,—strike [462] that. During any of these meetings where arbitration was discussed, was Mr. Benson, the Territorial Commissioner of Labor, present? A. Yes.

Q. And were you present?

A. I was present with Mr. Benson and the Company.

Q. Yes. When arbitration was discussed?

A. Yes.

Q. Now, in all of these meetings that we have

(Testimony of William H. Flint.)

talked about here, as I understand it, and to end this aspect of it, the purpose of these meetings was to try to work out some solution to resolve the dispute. Is that true?

A. That is right.

Q. That is particularly true of the meetings attended by Mr. Albright with members of Local 16; is that right?

A. Right.

Q. And true of these other meetings with Mr. Albright, as he expressed himself, "to find some amicable way of ending the trouble then existing." Is that true?

A. Yes, as long as the Local 16 could load the barges.

Q. Did Mr. Albright—did I understand you to say that Mr. Albright never consented to arbitration and said "We will consent to arbitrate this dispute if we win it?"

A. That is about what I would sum it up as; yes.

Q. You are saying that Mr. Albright never [464] consented to arbitrate; isn't that true?

A. I will have to say I got the words "arbitration" and "negotiation" mixed up.

Q. Do we have to start this all over again? When you talked about negotiations to get the work done, when you talked about arbitration you meant——

A. Local 16 was always willing to set down and thrash this thing out.

Q. With the mill?

A. The mill and us, with the thought that they would load the barges.

(Testimony of William H. Flint.)

Q. Certainly. We'd better explain the terms again. Everything you said as to arbitration should have been referred to as negotiations. Is that true?

A. Perhaps you are right.

Q. That means, therefore, so far as negotiations with the Company is concerned—particularly at this early stage when probably there was more talking than later—that Local 16 representatives always said they would negotiate with the Company "with the consent of the I.W.A. we can do this work. The Company has no reasonable basis for not giving us the work and so we want the work." Is that true?

A. Yes.

Q. Substantially so. They changed their position and said [464] they would arbitrate the issue and whatever the arbitrator says about this work, we will be governed thereby?

A. I believe you are right, that they consented to a local arbitrator.

Q. And whatever he said regarding loading barges they would be bound by?

A. If that is what arbitration is. If they used the word "arbitration" and consented to arbitrate, I imagine that is what they meant.

Mr. Strayer: I move the last answer be stricken.

Mr. Andersen: It is cross-examination.

The Court: Did you say the last answer be stricken?

Mr. Strayer: Yes, your Honor. He testified to what he imagined the longshoremen meant.

(Testimony of William H. Flint.)

The Court: Of course, the world "imagine" wouldn't make the answer subject to being stricken. That is so often used in a sense of believing or thinking. In view of the fact that counsel has had difficulty finding out just what the witness meant by these several terms and some of his answers, I think the motion will have to be denied.

Mr. Andersen: Would you read the last question and the last answer?

Court Reporter: Q. "And whatever he said regarding loading barges they would be bound by?" A. "If that is what arbitration is. If they used the word 'arbitration' and consented [465] to arbitration, I imagine that is what they meant."

Q. Is that correct, sir—your last answer?

A. That is correct.

Q. In these fifteen or twenty meetings you talked about the difficulty the Union was having?

A. That is right.

Q. And you wanted the Union to remove the picket line? A. Right.

Q. You fellows wanted to return to work if you could, honorably? A. Right.

Q. Was it during this discussion of the picket line that this question of arbitration came up as the basis of settling this dispute, because you fellows wanted it settled?

A. I believe that is when it came up, during those discussions.

Q. When you discussed it with representatives

(Testimony of William H. Flint.)

of Local 16 you discussed the whole situation, that you wanted to return to work if possible, wanted the longshoremen to do the loading, and wanted to figure any way of settling so the picket line can be removed; is that correct?

A. I can't answer it all "Yes" or all "No."

Q. I will split it up. Probably all the discussions about the picket line resolved themselves into how the whole matter can be adjusted; that is correct? A. Correct. [466]

Q. And these discussions were usually held with representatives of Local 16 and sometimes Mr. Albright was present; is that what you say?

A. That is right.

Q. And sometimes Mr. Albright might speak for the Local and at other times other members might speak for the Local. Is that true?

A. That is right.

Q. I assume during this period of time that as you indicated before, that you occasionally talked to Mr. Albright to get advice from him as an old head about trade unionism and such as that? Is that correct?

A. I don't know that I ever asked him for any advice or not. I may have.

Q. You have no recollection?

A. No recollection of a specific instance.

Q. During the time that Mr. Albright was here you got along all right with him, did you?

A. Yes; always have.

(Testimony of William H. Flint.)

Mr. Andersen: Just a moment, your Honor. That is all. Thank you. [467]

Redirect Examination

By Mr. Banfield:

Q. Mr. Flint, you testified here yesterday regarding your job and what the Company was doing down at the plant during the winter of 1947-1948, a year ago this last winter. What did they do down at the plant? A. You spoke of 1947-1948?

Q. Yes.

A. Yesterday I spoke of 1948 and 1949.

Q. In other words, you didn't pretend to know what was done at the plant while it was shut down the winter of 1947 and 1948?

Mr. Andersen: I object. The question is leading.

Mr. Banfield: I think, if the Court please—I would like to clear up the date he was talking about.

The Court: The objection is to the form of the question, which is leading.

Q. When were you first employed there?

A. In April, 1947.

Q. In April, 1947. Now, at the end at that year do you know what kind of work the Company was doing? A. Yes.

Q. What kind of work were they doing?

A. They remodelled the sawmill at certain places, at places the mill was rotten and they had to put some new stuff in, and new material, and motors

(Testimony of William H. Flint.)

burned out—they put in new [468] motors and machinery of all types.

Q. What kind of work were you doing that winter, outside or inside? A. Inside.

Q. This was before the strike? A. Yes.

Q. Was it a continuous repair and rebuilding during the whole winter?

A. Yes, I would say it was.

Q. Now, during the next winter, what kind of work did they do?

A. I would say it amounted to about the same thing.

Q. Was it a case of tearing out from the winter before or was it different?

Mr. Andersen: What winter are you talking about now?

Q. The winter of 1948.

A. It was a case of tearing out a certain amount that had been put in and a case of putting in in places in the mill that got rotten from years ago, which had already been there. It was practically the same type of work as the winter before.

Q. Now Mr. Flint Mr. Andersen asked you a question and I asked the Reporter here to read the question specifically, to which you answered "Yes" yesterday. I will try to [469] frame this question as he did. He said, "Didn't you agree on July 3 in a written agreement marked as Plaintiff's Exhibit No. 7 that you would claim jurisdiction of all work performed by employees of the Juneau Spruce Cor-

(Testimony of William H. Flint.)

poration according to your contract, and also the loading of the Company-owned or leased barges with Company-owned gear?" Was that the statement? Do you remember that question?

A. Yes, I do.

Q. You did answer "Yes" to that question, did you not? A. I believe I did.

Q. Mr. Flint at this meeting of April 9 just before the picket line was established, you said that you presumed that they read the minutes, but you didn't hear them. Is that your testimony?

A. I presume that they were read; yes.

Q. Is it the custom to read Union's minutes at a public meeting? A. No, it is not.

Q. In view of the fact that it was a public meeting, would you make the same presumption?

Mr. Andersén: I object to that as something not in evidence, and second as leading and suggestive. Counsel is testifying rather than asking questions.

The Court: I think he has already testified as to the character of the meeting. [470]

Mr. Andersen: He said they were all eligible to join. Everybody who was there was eligible to join, the witness said.

The Court: He may be interrogated as to the character of the meeting and whether or not he knows minutes of it were made.

Q. You may answer.

A. I forgot the question.

Q. Would you presume the Union would, at a public meeting, have the minutes read?

(Testimony of William H. Flint.)

Mr. Andersen: I will object to the form of the question as calling for a conclusion of the witness.

The Court: Objection overruled.

A. I presume that if we had an officer who had taken the minutes who knew what he was doing, the minutes would not have been read. Due to the fact that we had officers who made records as he did and kept such a record as he did, I presume he would read them.

Q. You testified that the Juneau Spruce Corporation paid your expenses to Portland. How much did they pay you?

A. A couple hundred dollars.

Q. Do you know the exact amount?

A. I am almost sure that is what it was. It was $200, I am quite positive.

Q. Was this money paid to you before you [471] left or after you came back? A. Before I left.

Q. Will you tell us how it was that the Juneau Spruce Corporation gave you this $200 to go to Portland?

A. I received a phone call from one of the Company officers in Oregon, Mr. Card, and he asked me —he had heard rumors——

Mr. Andersen: I am going to object to that as hearsay.

The Court: Yes.

Q. Just state what he stated.

The Court: That is subject to objection. I think

(Testimony of William H. Flint.)

the conversation between them can be eliminated, can it not?

Mr. Banfield: I think probably it can, if the witness so phrases it to state what transpired.

The Court: He can answer why he went down.

Mr. Banfield: Yes.

Q. Why did you go down to Portland?

A. To see the International Officers of our Union and the lawyer of our International so that I could find out the operation of the Taft-Hartley labor law, which I couldn't find anyone in Juneau who did know how it operated.

Q. Now, Mr. Flint, were you asked to go down there by anyone?

A. I was asked to go down; that is right.

Q. By whom?

A. By the man who represented the Company.

Q. Who?

Mr. Andersen: He said by the man who represented the company.

A. Mr. Card.

The Court: You can be specific.

A. Mr. Card.

Q. Did anybody else ask you to go?

A. No one else asked me, no.

Q. Did you have any meeting with your Union officers about going?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial.

Mr. Banfield: If the Court please, I would like to show his authority for what he was doing.

(Testimony of William H. Flint.)

The Court: That he went down, you mean, as representative of the Union?

Q. Did you go as a representative of the Union?

A. I did.

Q. Did you have authority to go?

Mr. Andersen: I object to that as calling for a conclusion and opinion of the witness. I never heard of a Union sending anybody at his own expense.

Mr. Banfield: You will learn about it in due time.

Mr. Andersen: We always learn. [473]

A. I called officers of my Local and representatives of Local 16, the Longshoremen's Union, and told them I was going to Portland at the Company's expense and they raised no objection to my going.

Mr. Andersen: I move that the last answer be stricken as a conclusion and opinion of the witness.

The Court: Objection overruled.

Q. Now, Mr. Flint, you stated that the Company paid you $200 at this time. Was there any further understanding about this $200 between yourself and the Company? A. Yes, there was.

Q. State what it was.

A. I told him that we had a very small amount of money in our Treasury at the time and I couldn't take the money, and if they wanted our Local to know what was right and what was wrong and have them contact someone who knew, they would have to pay the expenses down there, and they might get

(Testimony of William H. Flint.)

it back and they might not, depending on how successful our Union was in the next few years.

Q. Did you have $200 in the Treasury at that time? A. I don't think we did.

Q. How much did you spend on that trip?

A. I spent over that, I know.

Q. Who paid the balance? A. I did.

Q. Has the Union ever had $200 since then?

A. No.

Q. Where did the money come from for you to go down on the second trip?

A. The men in our Local came to the Hall and the Convention Ordinance was read to them that we should send a man to represent our Local to this convention, and they dug in their own pockets, by vote, of course, and chipped in the money for me to go to Portland.

Q. As the result of this trip to Portland is the Union indebted to the Juneau Spruce Corporation—

Mr. Andersen: I object to that as calling for the conclusion and opinion of the witness.

Q. For this amount of $200?

The Court: Objection overruled.

A. As far as I am concerned we are not.

Q. Are not?

A. Unless at such a time in the future we had enough to see our way to pay it back without hurting our finances in the Local.

Q. In other words, there was no definite promise that you would pay it back?

(Testimony of William H. Flint.)

Mr. Andersen: I move that be stricken. It is the testimony of counsel.

The Court: He just repeated in effect what had already been testified to. The motion is denied.

Q. Was there any definite and binding agreement to pay it back? A. No.

Q. If not, what was it conditioned on? Was there any condition attached?

A. That they might——

The Court: He has aready testified to the condition.

Mr. Andersen: Yes, it has already been asked and answered, your Honor.

Q. Now, you said, Mr. Flint, that Mr. Card called you. Had you contacted anybody in the Company previous to this about going to Portland? Where was the idea initiated? Who initiated it?

Mr. Andersen: I submit he has already testified Mr. Card telephoned from Portland.

Mr. Banfield: But he didn't say anything about the circumstances—at whose request or anything else. I want to know who initiated it.

The Court: He may state how this idea originated.

A. To the best of my knowledge——

Mr. Andersen: I move that be stricken as an opinion and conclusion of the witness.

The Court: Just state what you know.

A. I know that just before the phone call received by me, a [476] week or so before that time,

(Testimony of William H. Flint.)

there were many of our members wanted to go back to work and talked about it on the street.

Mr. Andersen: I move that be stricken as not responsive.

The Court: He is not answering the question.

Q. Do you remember a conversation with Mr. Stamm on this subject? Mr. Stamm, who worked in the office of the Company? A. Yes.

Q. What was that conversation?

The Court: I don't think it is necessary to state that. State whose idea it was that you go to Portland, yours or somebody else's or whose, if you know. A. It was my idea.

Q. When was that idea first conveyed to anybody in the Juneau Spruce Corporation?

A. I conveyed that in the phone conversation with Mr. Card.

Q. Did he call you or——

A. He called me.

Q. In pursuance to any request or on his own? Did you make the request in the first place?

A. He called me at the request of someone else.

Q. Who was the someone else?

A. One of the officers of the Juneau Spruce locally. [477]

Q. Who was he?

A. A Mr. Dick—I can't recall his name. Dick Stamm.

Q. Had you talked to him about going to Portland before you talked to Mr. Card? A. No.

(Testimony of William H. Flint.)

Q. Then the idea originated with Mr. Stamm, you think? A. No.

Mr. Andersen: I move that be stricken.

Q. You say the idea originated with you to go to Portland. How did you get in touch with the Company and how did Mr. Card get in touch with you? A. May I explain?

The Court: All you have to answer is whose idea it was, yours or Mr. Stamm, or Mr. Card—who first had the idea?

A. I did.

The Court: You had the idea to go to Portland before Mr. Card called you up? A. I did.

Q. Did you convey that idea to the Company?

A. Yes, that is right.

Q. By what method?

A. Over the phone to Mr. Card.

Q. How did it happen that Mr. Card called you, if you know?

Mr. Andersen: I submit it is bordering on the ludicrous. I object to the form of the question. It is incompetent, [478] irrelevant and immaterial, and calling for a conclusion and opinion of the witness.

The Court: The only question is with whom the idea originated. He said it originated with him.

Mr. Andersen: After he talked with Mr. Card now; that is the last answer.

Q. Did the idea originate with you after or before you talked to Mr. Card?

Mr. Andersen: I submit, he has already answered that.

(Testimony of William H. Flint.)

The Court: It is in such a state as to warrant further examination.

A. It was while I was talking to Mr. Card.

Q. While you were talking to Mr. Card you got this idea to go to Portland?

A. Yes, that is right.

Q. What were you talking about that gave you the idea?

A. I was talking about our men going back to work or not. He asked me if our Local would go back through the picket line, I said, "No, not until we had a chance to confer with our lawyer and a lawyer who knew the Taft-Hartley law," and if he knew there would be a lawsuit against us or if it would help to go through the picket line, or make it worse, or what the situation was.

Q. Now, Mr. Andersen questioned you about a meeting of last November, about the fifteenth or eighteenth, in the office [479] of the Juneau Spruce Corporation. Was there any proposal at that meeting that anyone arbitrate this dispute?

A. Like I said before, arbitrate—a proposal that we sit down and negotiate it, more than arbitration.

Q. Did anyone propose at the meeting of the eighteenth that this entire matter be left or decided by someone or a group of persons and that that decision be final and binding on everyone?

A. No.

Q. Was any such proposal made by the I.L.W.U. or Mr. Albright at any time in November, 1948, that this be done?

(Testimony of William H. Flint.)

A. In the month of November?

Q. Yes. A. I would say "No."

Q. Now, was the I.W.A. willing to arbitrate this matter and to be bound by the decision of any arbitrator at any time after the picket line, after you walked through the picket line?

A. Yes; I have got to back-track that answer.

Q. You may qualify it.

The Court: Correct it?

A. Up to the time we went through the picket line, that we were willing to settle by arbitration or any means, but after we went through the picket line, we were ready to claim jurisdiction and fight for that jurisdiction. [480]

Q. When did you go through the picket line?

A. July 6.

Q. 1948? A. 1948.

Q. Now in the discussions between April 1, 1948, and the discussion—and going through the picket line in July of 1948, you stated that Mr. Albright did propose arbitration by an Alaskan arbitrator?

A. Yes.

Q. Was there anyone specifically mentioned by Mr. Albright as being this arbitrator?

A. Well, in a way he did, and in a way he didn't, make it a specific name.

Q. Who was to name this arbitrator, according to his proposal?

A. All our arbitration centered around the fact that the logical one to do it would be the Labor

(Testimony of William H. Flint.)

Department in Juneau, the Labor Department of Alaska.

Q. The one of which Mr. Henry Benson is Commissioner of Labor? A. That is right.

Q. You mean it centered about them naming the arbitrator, or Mr. Benson being the arbitrator?

Mr. Andersen: I object to that as complex and suggestive. [481]

The Court: Objection overruled.

Q. Go ahead.

A. Whenever we were talking about arbitration we always worked out of Benson's office. He would seem the logical one to be it, so I imagine that would be who the arbitrator would be.

Q. Was the question of arbitration ever put up to the I.W.A. membership?

A. You mean if we had a legal right?

Q. No; did you ever take a vote in the I.W.A. meetings, between April 1, 1948, and the time you went through the picket line, about three months later to determine whether or not your members would permit Mr. Benson or his Department to arbitrate this matter?

A. No, there was no vote of that type taken.

Q. It never got to the point where you were authorized to submit it?

Mr. Andersen: I object to that as calling for a conclusion and opinion of the witness, and it is leading and suggestive. Counsel's questions are leading.

(Testimony of William H. Flint.)

The Court: He has already answered to that effect. It seems to me that it is not necessary to ask the question.

Q. Were you ever authorized to submit the matter to arbitration?

Mr. Andersen: I object to that on the ground I just [482] stated a moment ago.

The Court: Objection overruled.

A. There was never any actual authorization taken where we would be allowed to submit it to arbitration; no.

Q. Now, you spoke of being present at a meeting with Mr. Benson, and you said the Company. Who did you mean by "the Company"?

A. With Mr. E. H. Card.

Q. And who else was present?

A. Myself, Mr. Card and Mr. Benson. I believe that is all.

Q. Did you ever attend such a meeting with Mr. Card in the office of Mr. Benson at which Mr. Evans was present, a Deputy Commissioner of Labor? A. I don't think so.

Q. It was just Mr. Benson you think?

A. Mr. Benson.

Q. Mr. Flint, in November, 1948, you have mentioned several meetings with Mr. Albright and Local 16 members for the purpose of discussing this dispute. In these discussions were you able to arrive at a settlement? A. No.

Q. And if not, what was the thing that prevented

(Testimony of William H. Flint.)

you from coming to an agreement; what was left in dispute?

Mr. Andersen: I object to that as calling for a conclusion. [483]

The Court: Hasn't that been gone over?

Mr. Banfield: No, your Honor, it hasn't been brought out as to the position. All we have had so far is during the period the I.W.A. refused to go through the picket line. They were willing to give up part of this work if the longshoremen proved their claims and respected their picket line until then, and after that, they were unwilling to give up the barge loading or any part of it. I would like to know if that is consistent with any offers made at this time in November, 1948, at the negotiations.

The Court: Very well, but make it brief.

A. The argument was over one man on the dock, who that man would be, would belong to.

Q. One man on the dock?

A. That is right.

Q. And what would he be doing?

A. He would be a man who hooked the lumber onto the gear, slingman.

Q. Slingman? A. One slingman.

Q. Did the longshoremen represent to you that they would do this work with one slingman?

Mr. Andersen: May it please the Court, I object. The question is answered. He said, "one man."

Mr. Banfield: We don't know which. [484]

(Testimony of William H. Flint.)

Q. Which one?

The Court: It would seem to me more accurate to ask if it was over some work rather than which man.

A. It was over who would have the man, or men, who would sling the lumber. I don't know that we discussed how many.

Q. The men?

Mr. Andersen: I move the last part be stricken as a conclusion and opinion of the witness. He said that they were arguing about one man. After counsel makes a speech, now he says "man or men." It is simply narrative, and I move it be stricken.

The Court: Is your objection to the answer or question?

Mr. Andersen: To the answer and question, for the purpose of objection.

The Court: The motion is denied.

Mr. Banfield: If there is any question there, I will withdraw it. I don't know whether there is or not.

Q. What did you offer; that is, the I.W.A., at this series of meetings?

A. Our offer was we would take all jurisdiction on the dock, give the I.L.W.U. all jurisdiction on the barges on the water. In other words, the face of the dock would be the dividing line between our jurisdictions. [485]

Q. The face of the dock would be the dividing line between your jurisdictions? A. Yes.

(Testimony of William H. Flint.)

Q. Who would be the crane operator?

A. Our man.

Q. And who would unhook the slings on the barges and store the lumber on the barges?

Mr. Andersen: I object to that as calling for a conclusion and opinion of the witness.

Mr. Banfield: No; it was an offer.

The Court: Objection overruled. If he knows he may state.

Q. If you know, go ahead.

A. The man who unhooked the lumber would be the men from the Local 16, I.L.W.U.

Q. Did the I.L.W.U. accept that proposal?

A. No.

Q. Did they give any reason for not accepting it? A. Yes.

Q. What was the reason?

A. They said that they felt they should have a man on the dock also, or men—whatever it was—who would sling the lumber.

Q. Did they say how many men were involved?

A. As I said before, I don't think we got down to just how many it would be. [486]

Q. The summary was that the bullrail was the dividing line? A. That is right.

Q. That was your proposal, that the bullrail would be the dividing line? A. Yes.

Q. But they wanted a man on the dock; is that it?

Mr. Andersen: I object.

(Testimony of William H. Flint.)

The Court: It is repetitious. He has already testified to this.

A. Yes.

Mr. Banfield: First, I stated here the other day, may it please the Court, that we were unable to obtain certain telegrams. I believe we have them now.

Q. Do you have them now, Mr. Flint?

A. Yes, I have.

Mr. Banfield: As I represented to the Court, I think Mr. Kirkham testified that after Mr. Card arrived here October 23, 1947, they had a meeting, and a few days thereafter sent a telegram asking authorization from the Union to the International headquarters, and that a reply was received.

Q. Mr. Flint, who has charge of the records of the I.W.A. Local?

A. Right at the present, I have, in conjunction with the lady who we have who is acting as our bookkeeper. [487]

Q. Do you have the copy of a telegram sent sometime between October 23 and November 3 and a copy, that is to the International, and a copy received by Mr. O'Day from the International?

Mr. Andersen: What year?

Q. 1947.

A. I know we had that copy up until the National Labor Relations Board hearing or whether it was submitted for evidence in that, I do not know.

(Testimony of William H. Flint.)

Q. You mean the originals or copies?

A. The original might be in our files or might be in the N.L.R.B. file.

Q. Have you searched for it?

A. Not in the last, I would say, not in the last six months—three or four months.

Q. Have you any copies of those telegrams?

A. I am quite sure we have.

Q. Where did you get the copies?

A. Yesterday I asked our lady, our bookkeeper, to look these up.

Q. And what did she say?

A. She said this is what she found.

Q. In the files? A. In the files.

Mr. Banfield: I will show it to counsel. [488]

Q. Mr. Flint, have you ever seen the originals of these telegrams? A. Yes.

Q. Where did you see them?

A. I have seen them several times in our files.

Mr. Banfield: If the Court please, I will offer these.

Mr. Andersen: May it please the Court, I am not going to make the best evidence objection on counsel's representation.

Mr. Banfield: I am quite sure that we had them at the N.L.R.B. hearing.

The Court: They may be admitted.

Mr. Andersen: I object on the grounds that they are incompetent and immaterial and hearsay.

(Testimony of William H. Flint.)

The Court: I thought you were waiving objection.

Mr. Andersen: I waived only the best evidence objection, may it please the Court.

Mr. Banfield: I will show them to the Court.

The Court: Well, this has in substance already been testified to by Mr. Kirkham?

Mr. Banfield: In part.

Mr. Andersen: The state of the record shows they are entirely incompetent, immaterial and irrelevant. If a position was taken by those telegrams, it was changed by the [489] Local.

Mr. Banfield: What organization?

Mr. Andersen: I.W.A.

Mr. Banfield: If the Court please, this is testimony regarding the making of an agreement on November 3, 1947.

The Court: Objection overruled. They may be admitted.

Mr. Banfield: That is all Mr. Flint, unless you have cross-examination? That will be all Mr. Flint. I will read the telegrams to the jury.

A. Your Honor, will I be allowed to make a legal statement for arguing?

The Court: No, you have merely to answer the questions that are allowed to be asked you.

A. Am I excused?

The Court: The rule is that he should be on the stand while this is read to the jury.

Whereupon the telegrams were marked Plaintiff's

(Testimony of William H. Flint.)

Exhibit No. 8 and Plaintiff's Exhibit No. 9.

Mr. Banfield: This is a telegram dated October 30, 1947, to the International Woodworkers of America, Portland, Oregon. "The Juneau Local of the I.L.W.U. has asked the Union to recognize their dispute with the management of this sawmill and to go on record as to not disputing their jurisdictional line that they load all barges and scows and that they [490] handle all the movement of lumber from sheds to boats, scows, barges and from face of dock. The Company has stated that they will not comply with any of the above demands and that they will load all barges and scows with mill crews which would come under our jurisdiction. As far as we know at the moment this Company intends to load barges and scows here and tow them to Prince Rupert and ship from there by rail to the States. The longshoremen state that they do not want to cause a jurisdictional dispute with us and want us to recognize their demands by majority vote and to recognize their picket lines should they be established. They also state that they have been loading barges and scows for this sawmill for years. We are having a meeting this Saturday night, November 1, and would like to have your views by then as to whether we should recognize all or part of their dispute. Tim O'Day, Local M-271, Box 1951, Juneau, Alaska." That was Plaintiff's Exhibit 8. Plaintiff's Exhibit 9 is a telegram dated October 30, 1947, to Mr. T. O'Day, I.W.A., Local No. M-271, Post Office Box 1951, Juneau, Alaska. "Reurtel as

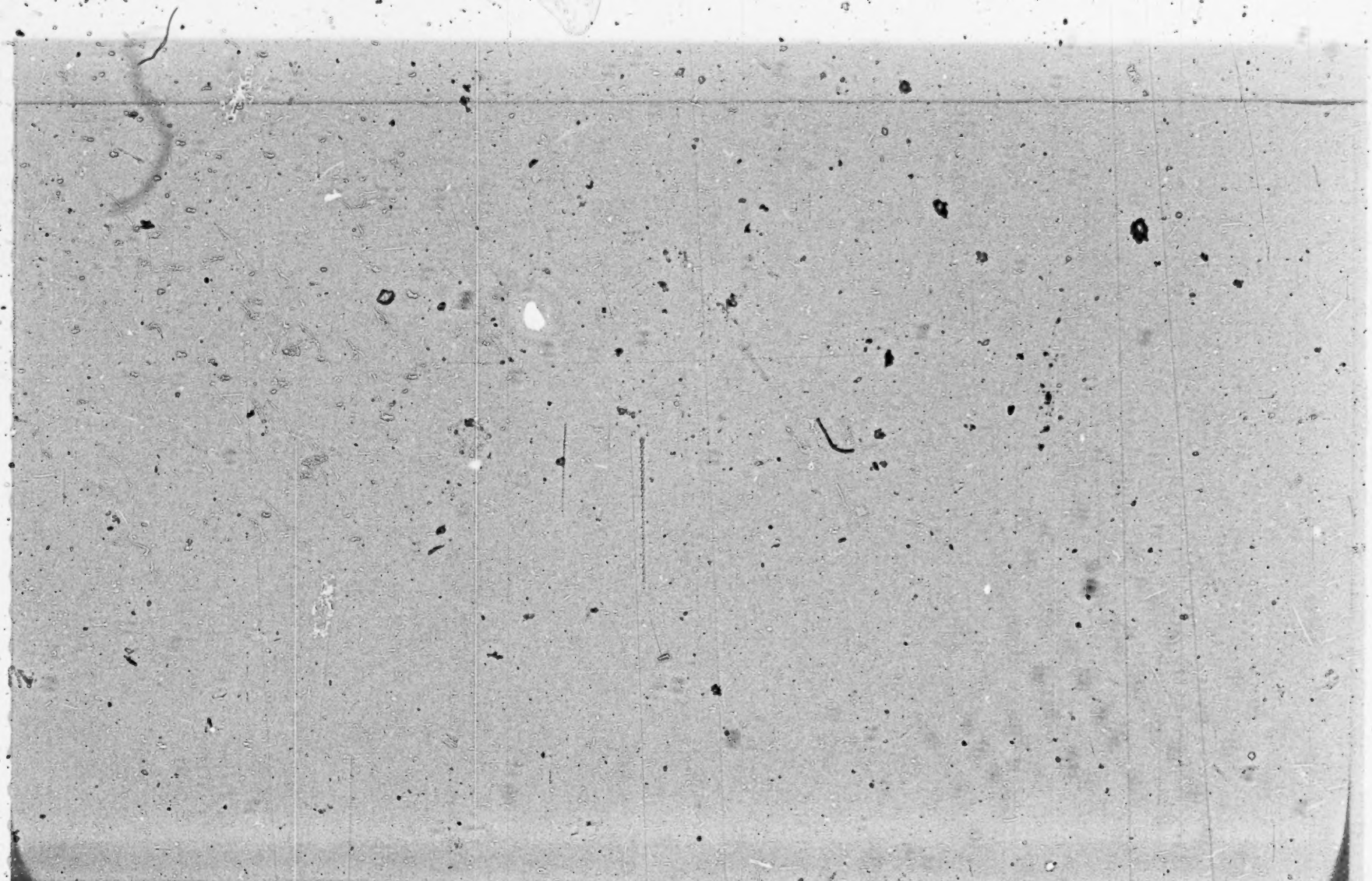
(Testimony of William H. Flint.)

to I.L.W.U. dispute. Without knowing details of your problem your decision should be made on past practice. If the people involved have been in I.W.A. bargaining unit they should stay there. If this is a new practice of the Company then the mill crew should put the lumber from the sheds to ship side and the longshoremen take it from there and load it with ship gear. The loading [491] of barges, scows, etc., with Company equipment is under our jurisdiction. This is the way it is handled on Pacific Coast. Although we have had minor disputes with longshoremen over this matter we have always won out. If any serious question comes up over jurisdiction it should be placed before C. I. O. Regional Director, Chris Hennings, Juneau, Alaska. If not settled there C. I. O. Jurisdictional Committee. Keep us informed on outcome. Send up-to-date contract with Company. If no extra copy we will make copy and return to you. Virgil Burtz, Acting Secretary-Treasurer, International Woodworkers of America, Portland, Oregon."

Mr. Andersen: There will be no further questions, your Honor.

Mr. Banfield: You may be excused.

(Witness excused.)



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TRANSCRIPT OF RECORD

(Pages 553 to 1103)

Supreme Court of the United States

OCTOBER TERM, 1951

No. 280

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION ET AL., PETITIONERS,

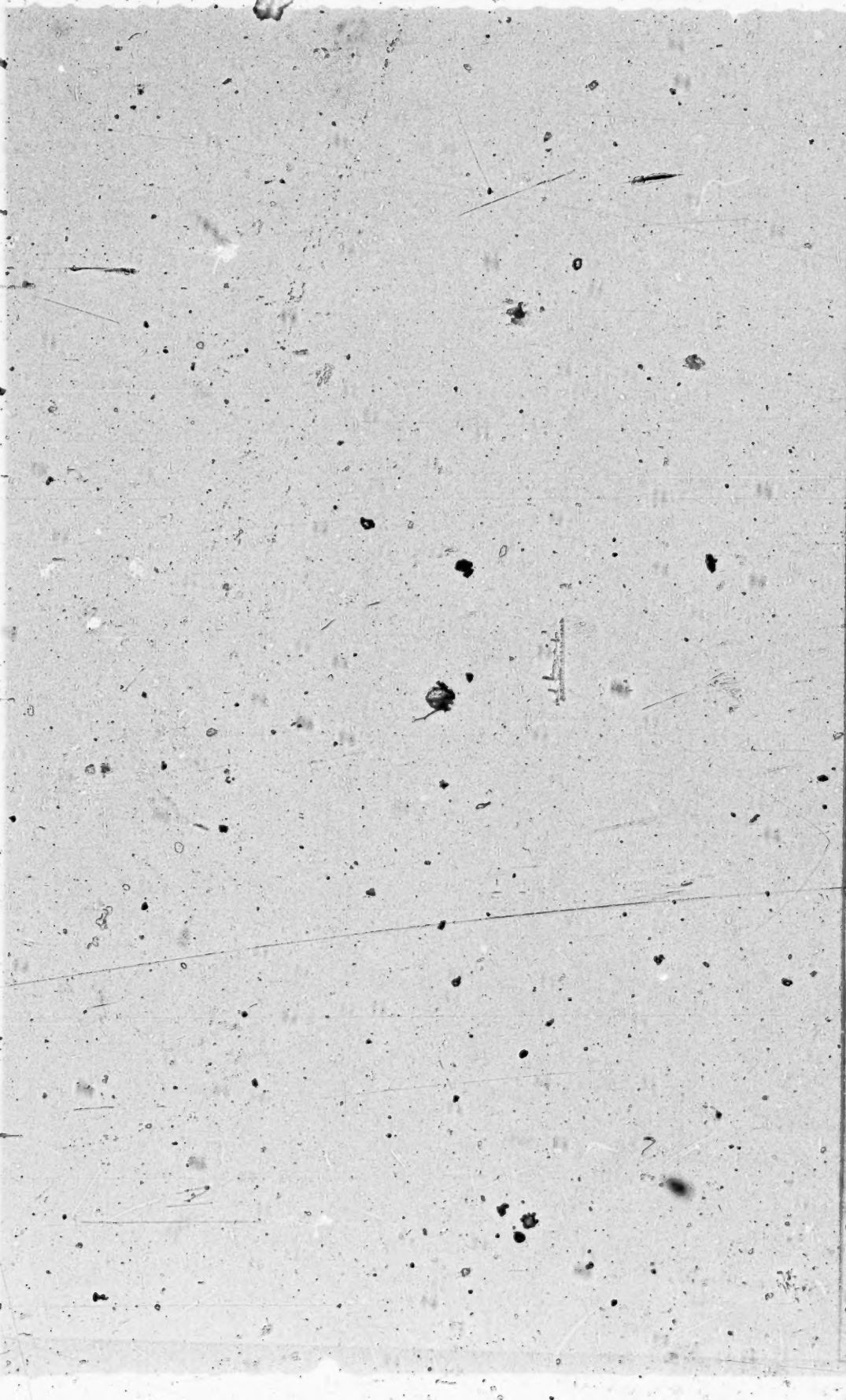
vs.

JUNEAU SPRUCE CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 27, 1951.

CERTIORARI GRANTED OCTOBER 22, 1951.



No. 12527

United States
Court of Appeals
for the Ninth Circuit.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION LOCAL 16,

Appellants,

vs.

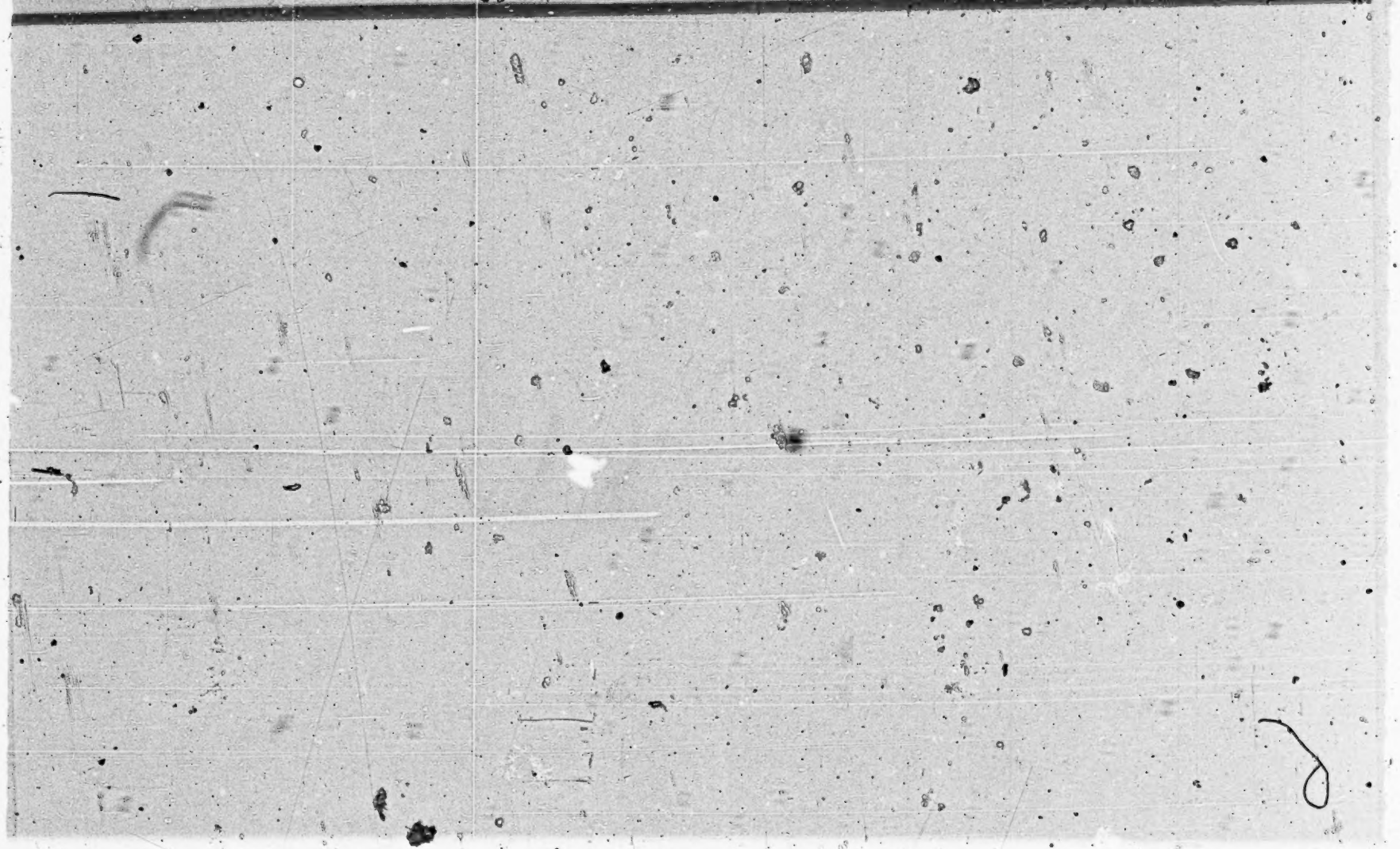
JUNEAU SPRUCE CORPORATION, a Corporation,

Appellee.

Transcript of Record
In Three Volumes
Volume II
(Pages 553 to 1103)

Appeal from the District Court for the Territory of Alaska
Division Number One

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.



GEORGE B. SCHMIDT

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. Would you state your name, please?

A. George B. Schmidt.

Q. Where is your residence, Mr. Schmidt?

A. Juneau, Alaska.

Q. Mr. Schmidt, did you work for the Juneau Spruce Corporation, [492] in Juneau?

A. I did.

Q. Between what dates were you working for the Company?

A. From May 6, 1947, to January 19, 1948.

Q. Where have you been employed before that, Mr. Schmidt?

A. With the Juneau Lumber Mills.

Q. Where have you been employed since then?

A. Columbia Lumber Company.

Q. What is your present position with the Columbia Lumber Company?

A. Assistant to the President.

Q. During the time you were with the Juneau Spruce Corporation, what was your position?

A. Assistant Manager.

Q. During the time you were with the Juneau Lumber Mills incorporation what was your position?

A. Vice-President and Assistant Manager.

(Testimony of George B. Schmidt.)

Q. What was the nature of the work you did for the Juneau Lumber Mills?

A. Well, I handled their sales and had full charge when the owner and President of the concern wasn't there—Mr. Rutherford.

Q. How many years have you been employed in the lumber industry?

A. In Alaska, twelve years, and practically all my life before [493] that—all my working life.

Q. Mr. Schmidt, are you familiar with the types of logs that are produced in Southeastern Alaska?

A. Yes.

Q. Have you observed the quality and kind of logs delivered to the Juneau Lumber Mills and Juneau Spruce and Columbia Lumber Company from Southeastern Alaska?

A. Yes.

Q. How long did you work for the Juneau Lumber Mills where you would be able to observe this log supply?

A. All the time I worked for them.

Q. How long was that?

A. From 1937 to when they sold, about eleven years—ten years.

Q. Mr. Schmidt, during that period of time, from how many different sources would you say, have you seen logs bought and sawed?

A. From all over Southeastern Alaska, the Juneau area and Ketchikan area and West Coast area.

Q. Would you be familiar with the particular

(Testimony of George B. Schmidt.)

kinds of timber that can be produced from this particular area?

A. Different kinds of timber.

Q. What kinds?

A. Spruce, hemlock and cedar. Cedar is very small and normally spruce—the mills attempt to get at least sixty [494] five per cent, and probably thirty-five per cent hemlock, and the balance of cedar, which is very normal.

Q. Will you explain the logging practice in Southeastern Alaska as to logging particular kinds and leaving other kinds, or just how you do it?

A. You have no choice in the matter. When you take an area you have to cut it clean. That is the Forest Service requirements. When you choose an area and buy at a sale you attempt to get an area with spruce in it, because spruce is the most salable type of lumber that you can get.

Q. But you do have to take whatever comes?

A. That is right.

Q. Is all the commercial timber in Southeastern Alaska under the Forest Service?

A. Yes; that is right. There are a few exceptions, but so rare that you can't really call them a source.

Q. The other source is from what?

A. Privately owned timber that they may have taken homestead rights on, but by and large forest timber is controlled by the Forest Service in Southeastern Alaska.

(Testimony of George B. Schmidt.)

Q. Mr. Schmidt, are you familiar with the quality and grades and different kinds of lumber that would be produced from lots of timber which the Forest Service sells?

A. I can speak from the experience I have had; yes. [495]

Q. Have you had any experience with the timber at Edna Bay?

A. Yes, when I was working with the Juneau Lumber Mills we had a sale there, I think it was in 1937 or 1938. We produced about three and a half million feet of timber in that area, which is largely spruce. Out of it our requests were about twenty-five per cent clears and the balance was common. At that time we didn't produce shop lumber. There wasn't a great deal of a market for shop at that time, but there was a big demand for clears. That is one of the reasons we took that timber in that area. The timber was very choice and would produce a great deal of clears.

Q. Would you explain again clears, shop and common, again?

A. Clear lumber is one without a great many defects. It runs into B and better, and C and D. B and better allows a very few defects in the way of knots or pitch pockets or things of that sort. C and D progressively allow more defects. Your shop has defects in it which would not be permitted in a grade of common, No. 1 common, but in the shop you can have large knots in the thing but get

(Testimony of George B. Schmidt.)

clear cuttings out of your piece of lumber and produce cuttings for doors and windows and things of that sort. Common is divided into three classes, 2 and better common, and No. 3 common, and a No. 4. Up here a No. 4 isn't of much value. In order to get it on the market it costs more [496] than it is worth. No. 3 has defects so that probably a piece can hold together and still be sold as a No. 3. No. 2 has plenty of knots in it, but it is workable and usable as construction lumber and select lumber is higher. It runs between clear and common.

Q. The common is the lower priced? Is there much spread between the best common and the poorest clear?

A. It depends on the market and the time of production.

Q. Is there a market now for shop lumber?

A. Yes, there is a market for shop lumber.

Q. Does that bring a better price than the common?

A. Yes, a considerably better price.

(Whereupon the jury was duly admonished and Court adjourned until two o'clock p.m., May 4, 1949, reconvening as per adjournment with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:)

Mr. Andersen: At this time, your Honor, I desire to make the same motion on behalf of the witness Flint on behalf of the International as I did

(Testimony of George B. Schmidt.)

with the other witnesses, and I presume the Court will take the motion under advisement?

The Court: Yes.

Mr. Banfield: May it please the Court, in this case we intend to show what the operations of the Juneau Spruce Corporation would have been in 1948 during the period from [497] April 1, 1948, to May 31, 1949; March 31, 1949, had there not been a picket line at the mill or any inducement to the employees not to work, and in doing so we have prepared a prospective profit and loss statement which will have to be proved by other witnesses. The purpose of this witness and of the exhibit, which I will state the offer, is to show the grades of lumber which would be from logs garnered, as Mr. Hawkins testified, for the year 1948, to show in an easy way what kind and to what extent each grade of lumber would be produced. That, of course, would later be followed up by testimony of grades and quantities in the grades that would be realized on the market, so the testimony of the witness at this time, standing by itself, would not appear to have any purpose in the case, but I wanted to connect it up to what the purpose is to show and apprise the Court and counsel.

The Court: Very well.

Mr. Banfield: I would like to have this marked for identification, two sheets of paper which we are offering as one document, which are marked Page 17 and Page 18 and which bear the heading "Ju-

(Testimony of George B. Schmidt.)

neau Spruce Corporation, Juneau, Alaska, Production by Grades, Months, etc."

The Court: You don't have to identify it if it is for identification. It may be marked for identification.

Mr. Andersen: As one exhibit?

Mr. Banfield: As one exhibit. [498]

Clerk of Court: It will be marked Plaintiff's Exhibit No. 10 for identification.

Mr. Andersen: Are you going to interrogate this witness regarding this?

Mr. Banfield: Yes, I am.

Mr. Andersen: Don't you have an extra copy of it?

Mr. Banfield: I have one for myself and associate attorney. I am sorry I don't have another one; however, we have no objection to your coming over here at the time.

(Whereupon the witness George B. Schmidt resumed the witness stand and the Direct Examination by Mr. Banfield was continued as follows:)

Q. Mr. Schmidt, have you examined the document marked Plaintiff's Exhibit 10 for identification previously? A. Yes, I have.

Q. Have you studied it?

A. Yes, I have.

Q. Have you studied each of the items on this exhibit with particular reference to the column marked "Percent"? A. Yes.

(Testimony of George B. Schmidt.)

Q. Now, that column shows certain percentages of the various types of lumber and I would like to know at this time if those percentages reflect accurately the percentage in each grade which the lumber produced in Southeastern Alaska would run after it was graded? [499]

A. It would depend—it would reflect what they produced, and as I understand, they got on a basis of practically 50% from——

Q. I mean from all Southeastern Alaska, all the logging camps?

A. That is correct.

Q. Have you examined these percentages with a view of determining whether they are higher or lower than the average run of logs in Southeastern Alaska?

A. Well, if you take and exclude the West Coast, you would probably.

Q. What do you mean by the West Coast?

A. The West Coast of Southeastern Alaska, Kosciusko Island and that area in there. I would say this is a very conservative estimate, because my experience with timber in that area, there is twenty-five per cent clears and from other areas from ten to fifteen per cent, depending on the exact—the different locations they were taken from, and I would think if this represents quite a percentage from the Kosciusko area, then their percentage is too low. I would think that it would run about twenty per cent, if you were cutting general run logs from Southeastern Alaska including the logs from Kosciusko area.

(Testimony of George B. Schmidt.)

Q. If you were just cutting logs with only a small proportion from that area, that is general run? [500] A. This would be it.

Q. Would you say that there is any question but what these grades, of clears, for instance, the total——

Mr. Andersen: May it please the Court, may I again object to these leading questions.

Mr. Banfield: I was just going to show what it shows on the exhibit, your Honor.

Mr. Andersen: The exhibit speaks for itself.

The Court: Well, let's hear the question.

Q. Mr. Schmidt, it shows on the exhibit here that——

Mr. Andersen: Pardon me, that is not in evidence. The document is not in evidence. It has only been offered for identification. It is not an exhibit.

The Court: Well, I don't quite get your objection now.

Mr. Andersen: Well, he refers to it as an "exhibit." It is not an exhibit in the case.

Mr. Banfield: It is an exhibit for identification.

Mr. Andersen: Only.

Mr. Banfield: Sure.

The Court: I think that is understood.

Mr. Andersen: That is true, your Honor.

Q. Now, Mr. Schmidt, this computation is based upon 15.54 per cent of the logs deemed clear logs?

A. That is, clear spruce. [501]

Q. Clear spruce logs? A. Yes.

(Testimony of George B. Schmidt.)

Q. If you were cutting a particular run of logs in Southeastern Alaska from several numerous sources, would the percentage of clears be higher or lower than that figure?

A. Well, if you take the general run of logs it would be less than this figure, I think, if you just take the ordinary run, but if you take the West Coast it would be considerably higher than this.

Q. If you took fifty per cent of the logs from what is called the Edna Bay area, and particularly, all from Kosciusko Island, under the Forest Service practices, and took fifty per cent of your logs from the general logging areas in Southeastern Alaska, what percentage of clears would you then get?

A. You are talking about clear spruce now?

Q. Clear spruce.

A. I should say it would be twenty per cent.

Q. Now, of the clear hemlock—how would that run from just a general run of logs without any from the Kosciusko Island area?

A. I think you have got it about right here, pretty close to five per cent, and I don't think there would be much difference. It might be a trifle more if you include Kosciusko. [502]

Q. If you have fifty per cent of the logs come from general loggers and fifty per cent from the Edna Bay, what would the per cent of clear hemlock then be?

A. It would probably run about six per cent.

(Testimony of George B. Schmidt.)

Q. Six per cent? A. Yes.

Q. Now, Mr. Schmidt, with respect to shop lumber, the exhibit here shows 11.37 per cent as being shop lumber. What do you think would be the percentage from the general run of logs in Southeastern Alaska in the shop grade?

A. Well, I think this also is low. I believe it should be pretty close to twelve per cent. I think twelve or thirteen per cent; I think around in there.

Q. How would it be in the shop grade if you took fifty per cent from the general area and fifty per cent from the Kosciusko Island area?

A. I think a recovery there would be about fifteen per cent.

Q. Instead of 11.37 as shown here?

A. That is right.

Q. Now, in the cheaper grade of lumber, that is the common spruce and hemlock—is that generally sold at the same price, Mr. Schmidt? Common spruce and hemlock?

A. Yes, there is no difference.

Q. How would the common run from just general logging areas as compared to how it runs as shown on this sheet? [503]

A. Well, I think that, so long as you have got the others in this sheet under what I estimate, therefore your common would be showing too much common.

Q. In other words, this exhibit for identification shows too high a per cent of common?

(Testimony of George B. Schmidt.)

A. Too high a per cent; yes.

Q. This exhibit shows 67.48. About what do you think it would run?

A. It will run about, probably about fifty-six per cent, something like that.

Q. Now these for Nos. 1, 2, 3 common?

A. They include select.

Q. Select merchandise, those three classes generally are called select?

Mr. Andersen: Could I interrupt just a moment, your Honor, to inquire whether this witness compiled this information?

A. You mean this that is on here?

Mr. Andersen: Yes.

A. No, sir.

Mr. Andersen: Then, may it please the Court, I think I shall object to the proposed document for identification. I presume it is to go into evidence. The document was compiled by somebody else other than the witness. They can't call a witness to correct their own document, or [504] explain their own statement on a different basis than it would probably be offered. I think it is incompetent, irrelevant and immaterial.

Mr. Banfield: If the Court please, this document, of course is just one of the very numerous items which have to be proved in a damage case of this kind. This document was not prepared by this witness, but by a person who will follow. It takes various experts to testify on various matters. This

(Testimony of George B. Schmidt.)

witness is an expert on this particular subject. This person who prepared it will be produced at a later time, and I will state that we are relying on it even though it is a conservative estimate.

Mr. Andersen: The person who compiled it should be called, otherwise four or five people will be testifying to the same exhibit. It is incompetent, irrelevant and immaterial, may it please the Court, for this witness to testify to it.

Mr. Banfield: It is only out of order, that is all.

The Court: It is within the discretion of the Court for a witness to testify out of order, but there should be some reason. If there isn't, first there should be the witness who made or compiled the record.

Mr. Banfield: It is only for the convenience of the Court. If we put that witness on to testify in regard to this, how he prepared this, and then there would have to [505] be a witness put on to prove the authenticity of the figures.

The Court: You mean this is done for the accommodation of this witness?

Mr. Banfield: It will save bringing him back twice and another witness twice, and there are other exhibits. He would have to be on the witness stand twice and it would delay the trial interminably.

The Court: If it will expedite the trial, that is a sufficient reason. Objection overruled.

Mr. Andersen: As I understand it, every witness is going to testify twice about the same docu-

(Testimony of George B. Schmidt.)

ment? I can't see the sense in that. It is cumulative and repetitious, a waste of time and a delay of the trial, rather than an expedition of the trial.

Mr. Banfield: I am afraid, Mr. Andersen, you didn't understand. It will save them appearing twice and they will only have to appear once.

Mr. Andersen: I understood both—two witnesses were going over one document. That is what I say is cumulative and repetitious.

The Court: Until we reach that stage we can hardly pass on whether it is cumulative.

Mr. Andersen: That is what counsel stated, your Honor.

The Court: There is no particular chance that this [506] testimony is going to be undisputed?

Mr. Andersen: It may well be.

The Court: Then the Court wouldn't permit any cumulative testimony. You may proceed.

Mr. Banfield: Whatever the previous question was, I will withdraw it.

Q. Now, Mr. Schmidt, with regard to the second page of this exhibit for identification, page 18 of the exhibit. Under "Cedar" there is a showing there that cedar would run .6 per cent or six tenths of one per cent of the logs from this entire area. Do you consider that a correct statement?

A. I think that is excessive.

Q. What do you think it would run?

A. It is so small I don't think it would run more than .2 of one per cent.

(Testimony of George B. Schmidt.)

Q. Is cedar more expensive than common or less expensive?

A. It depends on what the recovery is. If it is clears it runs up, but most of the cedar in this area is common.

Q. Shop grade?

A. Perhaps the same as the other, the hemlock and the spruce.

Q. Now, Mr. Schmidt, have you examined with particular attention the distribution of grades within the classifications of lumber? For instance, this exhibit for identification shows various types and sizes of vertical grain clear spruce, B and better, and of the clear spruce it [507] states that the B and better vertical grain 5 by 4 by 6 and wider would be 1.56 per cent, and going on for the different sizes and different grades and different types, it gives the percentage of clear spruce which would come out in each type. Have you examined that?

A. I have examined that, but that is largely a matter of manufacturing. I could only speak for the total of clears and the total of shop and common.

Q. You don't know how it would run out?

A. I couldn't break it down in those sections.

Q. When you were producing lumber, how was it determined what actual sizes you will cut out?

A. There is two or three different factors in that. One, are your orders, and then usually you

(Testimony of George B. Schmidt.)

try to cut what brings the best price on the market and what is marketable. That is determined by the market at the time of the cutting. There is no set rule for what you are going to cut today and what you might cut next month.

Q. Now, Mr. Schmidt, this exhibit for identification shows that there would presumably be a total production of 4,680,000 feet of lumber a month; in other words, forty-six million a year that would be, wouldn't it? A. Yes.

Q. You were at the Juneau Spruce plant until what date? A. June 19, 1948. [508]

Q. Were you acquainted with the condition of the plant at the time you left there? A. Yes.

Q. Would the plant, in that condition, have been capable, working on a two-shift basis, of producing in the year 1948 forty-seven million feet of lumber?

A. Yes; it probably would exceed that. We were cutting around 100,000 feet to a shift at the time. That would be 200,000 feet a day, twenty-five days, two and a half million a month.

Q. Two and a half?

A. Wait a minute. One hundred thousand—that is two hundred thousand a day—and a twenty-five day month.

Q. What did you say would be the average daily production?

A. Pretty close to two hundred thousand feet.

Q. Would that be with making allowances for

(Testimony of George B. Schmidt.)

temporary shutdowns, accidents and things like that?

A. Yes; sometimes you exceeded that and some days under that, but the average was one hundred thousand feet to a shift.

Q. Mr. Schmidt, what was the average production of this mill when Mr. Rutherford had it?

A. About the same, but he only ran one shift.

Q. During the time you worked for the Juneau Spruce Corporation, was there ever any certification by the [509] National Labor Relations Board designating any appropriate bargaining unit at the mill?

A. I didn't understand your question.

Q. While you were employed by the Juneau Spruce Corporation, was there any certification by the National Labor Relations Board determining any appropriate bargaining unit at the mill?

A. No.

Q. Was any labor organization or other representative ever designated by the National Labor Relations Board as the bargaining agent for any employees? A. No.

Q. Mr. Schmidt, were there any longshoremen who were members of Local 16 employed by the Juneau Spruce Corporation during the period that you worked for that Company?

A. That is the local organization?

Q. Yes. Tell me, while you were working for the Juneau Spruce Corporation, what particular job did they do?

(Testimony of George B. Schmidt.)

A. They loaded—when they were employed by the Juneau Spruce Corporation, they loaded some scows for customers and loaded some boats for customers, usually at their request, and it was the understanding at the time that the work——

Mr. Andersen: Just a minute.

Mr. Banfield: I think that answers the question. If he is getting a little off the exact question——

Q. Who owned these boats and scows?

A. The Sommers Construction owned some; the Astoria Puget Sound Canning Company, and there were some fishing boats.

Q. Let me ask this in summary: Were they all owned by somebody other than the Juneau Spruce Corporation? A. Right.

Q. Were there any boats or barges of the Juneau Spruce Corporation loaded at the mill?

A. Yes, I think there was a barge and a boat, the "Santrina" I believe.

Q. Who loaded those?

A. Juneau Spruce employees.

Q. And where did those employees who loaded the "Santrina" and the barge owned by the Juneau Spruce, where did they work?

A. They worked both on the dock and on the boat and on the scows.

Q. They were regular, steady employees?

A. That is right.

Q. Mr. Schmidt, were you ever visited, while employed by the Juneau Spruce Corporation, by

(Testimony of George B. Schmidt.)

any representatives of the International Longshoremen's and Warehousemen's Union?

A. Yes, I was.

Mr. Andersen: I move that be stricken as calling for a conclusion and opinion of the witness.

The Court: If he was ever visited?

Mr. Andersen: Yes, your Honor. I couldn't go down and buy an automobile and say Judge Folta asked me to buy the automobile.

The Court: He isn't attempting to state hearsay; it is his own experience.

Mr. Andersen: It is a conclusion. I make the objection as one of my basic objections. I am sure your Honor understands.

The Court: Same ruling.

Mr. Andersen: I would like to have a foundation laid.

Mr. Banfield: That is what I am starting to do.

The Court: Proceed.

Q. When was this visit?

A. I think along about October 2, 1947.

Q. And where did the visit take place?

A. It took place in the office of the Juneau Spruce Corporation.

Mr. Andersen: I will object to this too, may it please the Court. It is too far in point of time; too remote.

The Court: Objection overruled.

Q. Who was this representative, or who did he represent himself to be?

(Testimony of George B. Schmidt.)

A. Mr. Bulcke. I think he was Secretary of the Longshoremen's Union. [512]

Q. Do you know his first name?

A. No, I don't.

Q. Would you recognize it?

A. I think I would.

Q. Was it Germain Bulcke?

A. I couldn't say.

Q. Did he come there voluntarily, or did you request him to come?

A. No. He came there with some of the local longshoremen.

Q. Tell us what Mr. Bulcke said at that time.

Mr. Andersen: Same objection, your Honor.

The Court: Objection overruled.

A. He demanded that we place three additional men——

Mr. Andersen: I move that be stricken, may it please the Court. The question was what was said.

The Court: If you can, state the language used—the exact language used, and you should do that rather than state your own opinion.

A. He said he wanted to place three additional men on the longshore payroll to do the work, to do the work that the Juneau Spruce Corporation men were doing at the time. He called it "make ready work." He was demanding—he was asking—he said they wanted to take the lumber from the place of rest that it was at the time the boat got into port and it had been the custom to deliver the lum-

(Testimony of George B. Schmidt.)

ber [513] under the slings, and from that point on the longshoremen took it aboard, but he wanted to vary from that course and assume the jurisdiction over the lumber at the point at which it rested when the boat came in.

Q. What distance would there be from this point of rest when the boat came in and the point at which the longshoremen were in the habit of taking it over?

A. It would depend on where the storage was. Sometimes it was in the lower yard; sometimes in the upper yard. We had a carrier with a lift-fork and we put it on the floor level or the yard level and then transported it with a carrier to alongside the ship.

Q. Now in doing this particular work, just which parts of that operation did he want the longshoremen to do?

A. He wanted to put the carrier blocks, put them down where we set the load down with the lift-forks—he wanted to put the carrier blocks under that and wanted another longshoreman to take the carrier blocks away when their slings took possession, and put it aboard the boat, and he wanted a boss to boss the two doing this work.

Q. Could that be described in this way to get it clear to the jury: you have to use two different types of machinery? A. Yes.

Q. One to take it off and set it on the carrier block? [514] A. Yes.

(Testimony of George B. Schmidt.)

Q. And the other to the face of the dock?

A. Yes.

Q. What he wanted was a man to put the carrier block under the load before the lift-truck dropped it on the dock? A. That is right.

Q. And another man, after it arrived at the face of the dock, and after it was hoisted aboard the vessel, to take the carrier block and throw it aside?

A. Yes.

Q. And he wanted a boss for what?

A. Foreman or boss for those two men.

Q. What did you say in reply to this request?

A. I told him that I didn't think that was common practice, and asked if they were doing it at Sitka and Ketchikan and all along the Coast. He said they were. I said I would have to investigate that, so I did.

Q. What did you find out?

A. I wrote a letter to the Columbia Lumber Company and the Ketchikan Spruce Mill and a letter to the Coos Bay Lumber Company and all three denied it.

Mr. Andersen: I move that be stricken.

Q. What was the result of your investigation?

Mr. Andersen: I move that all be stricken as merely hearsay, may it please the Court. [515]

The Court: You may answer whether, from your investigation, the representation made was true or false.

Mr. Andersen: I also want to add the objection

(Testimony of George B. Schmidt.)

to this entire line of questioning as immaterial, and on this particular one also the best evidence objection, your Honor.

The Court: Objection overruled.

A. What was your question?

Q. What was the——

Mr. Andersen: Are those objections overruled, your Honor?

The Court: Yes.

Q. Was the representation made by Bulcke regarding this practice true or false?

A. It was false.

Mr. Andersen: The same objection, and to the answer.

Q. Did you ascertain that his representation was false as the result of your investigation?

Mr. Andersen: I object.

A. Wholly, as I have already told you, by letters from the various people I wrote to, and they denied it.

The Court: Did you communicate that fact to Mr. Bulcke?

A. No, I did not.

Q. Did Mr. Bulcke ever return?

A. No; he didn't talk with me, at least. I didn't see him [516] again.

Q. Did he send anyone to you to follow up on this demand?

Mr. Andersen: I object to that as calling for hearsay.

(Testimony of George B. Schmidt.)

Mr. Banfield: I am asking if he was contacted by anyone on it.

The Court: Objection overruled.

A. No; not in that—not with the request.

Q. What do you mean by that?

A. Well, they endeavored to take action——

Mr. Andersen: I move that be stricken, may it please the court, as not responsive to any question and calling for a conclusion and opinion of the witness.

Mr. Banfield: If the Court please, we are going to show here the next thing was not any request, but it was some other action; in other words, as a result of this or after this, rather—. I wouldn't say result—but in any event, I am going to show the facts, what happened after Mr. Bulcke left. The first fact, I am going to show that it was false, and I am going to show what was done next by the parties, not something said or heard but some physical thing done.

The Court: I think the objection was to the form the answer was taking, and perhaps premature—I don't know.

Mr. Banfield: I will withdraw the question.

The Court: I might say for the benefit of the witness that what was done is what should be testified to, if possible, rather than what was said, unless he is directly asked and it is permitted as to what somebody said.

Q. Mr. Schmidt, what was done after that with respect to carrier blocks?

(Testimony of George B. Schmidt.)

A. Well, the next boat that came in—it was probably ten days or two weeks, I can't tell the exact dates—but the longshoremen put three men to do that work which Mr. Bulcke had asked that they do, without our hiring them.

Q. They just came down?

A. They just came down.

Mr. Andersen: I move that any reference to Mr. Bulcke be stricken and also the answer, as incompetent, irrelevant and immaterial. I might add to the Court, about three witnesses testified as to the blocks on the dock. They weigh about fifteen pounds and had to be laid aside.

The Court: Is this witness attempting to connect Mr. Bulcke with it.

Mr. Andersen: I don't know.

Mr. Banfield: Mr. Card testified they asked to be paid as he arrived in Juneau. Mr. Hawkins testified he was out of town and Mr. Schmidt told him about it, but he didn't know what actually happened. I am getting at what actually happened.

The Court: The witness is asked, or is attempting to connect what occurred there subsequently with the request made by Mr. Bulcke, so the objection is overruled.

Mr. Andersen: Could I have the time stated?

The Court: Yes; the time ought to be fixed.

Q. Do you know the exact date?

A. No, I don't. I know it was the next boat following that interview I had with Mr. Bulcke on October 2.

(Testimony of George B. Schmidt.)

Q. Would it be less than a month?

A. Yes.

Q. Would it be less than two weeks?

A. I couldn't say.

Mr. Andersen: I move all that be stricken as immaterial and too far remote in point of time.

The Court: Objection overruled.

Q. Will you tell us your best estimate of how long it was after Mr. Bulcke's visit?

A. A little over ten days, and probably not over two weeks; I couldn't say for sure.

Q. Did these men actually perform the work as you described before?

A. They actually performed that work.

Q. Did the Juneau Spruce Corporation pay them for it? A. No, sir.

Q. Now, at the time these men performed this work, what kind [519] of boat was this that was being loaded?

A. A steamer; Alaska Steamship steamer.

Q. Was the lumber hoisted aboard with the steamer's winch and crane? A. That is right.

Q. And did the mill's employees, regular employees, move the lumber to the face of the dock?

A. Yes.

Q. And who attached the slings to the lumber?

A. You mean out at the dock? The longshoremen.

Q. Did the Juneau Spruce Corporation pay those longshoremen? A. Not the slingmen; no.

(Testimony of George B. Schmidt.)

Q. Was any special charge made for that particular work by the steamship company?

A. No. You mean against the Juneau Spruce Corporation?

Q. Yes. A. No.

Q. Now, Mr. Schmidt, in October, 1947, were there any other representatives of the I.L.W.U. or Local 16 who called on you?

A. Yes; along about the twenty seventh of October, as I recall it, there was a committee called upon me.

Q. Where did they call on you?

A. At the Juneau Spruce Corporation's office.

Q. Who was present at the time they called?

A. What do you mean? I was in charge and Mr. Hawkins was away.

Q. Do you remember what month that was?

A. October, I believe—October, 1947.

Mr. Andersen: I thought he said October 27.

A. He asked what month. You asked what month?

Q. Yes; and you said October, 1947.

A. Yes.

Q. Mr. Schmidt, I show you here Plaintiff's Exhibit No. 5 for identification, and ask if you wrote this letter.

Mr. Andersen: Before you ask any other questions, will you lay a foundation as to who was present, please.

A. Yes; I wrote this letter.

(Testimony of George B. Schmidt.)

Mr. Banfield: Do you mind if I ask what date is on the letter?

Mr. Andersen: No.

A. October 18.

Q. 1947? A. Yes.

Q. And who was present at the meeting which you have just described as occurring in October, 1947?

A. You mean of the Juneau Spruce Corporation employees or——

Q. I mean everyone who was present.

A. I don't remember who the men were. I know at the time I wrote the letter—it was officers of the Longshoremen, [521] and there were three of them, and I don't—I can't exactly name them. I knew the men and knew they were the officers at that time, but as I say, it is a couple of years now and I don't know their names, and it seems to me it was Ford and McCammon, and I don't remember whether Burgo——

Q. Burgo?

A. I think he was one of them, too, if I am not mistaken, but I couldn't swear to that.

Q. Who else was present? A. That is all.

Q. Of course, you were present? A. Yes.

Q. Do you know, after examining Plaintiff's Exhibit 5 for identification, the exact date this occurred?

A. Of course that was on the date I wrote that letter, and that is a copy of it. I know that.

(Testimony of George B. Schmidt.)

Q. What was the date?

A. October 18, 1947.

The Court: Is the purpose—or do I understand the witness has fixed the date at October 18 instead of the twenty seventh?

Mr. Banfield: That is right, your Honor.

Q. Tell me, what did the longshoremen say?

A. Well, we had a lot—— [522]

Q. What did they say?

A. They objected to the Company loading.

Mr. Andersen: May I ask that that be stricken and ask him to respond to the question by what was said? I think it would be preferable.

The Court: You should say, if you remember the exact—or repeat the exact language—rather than giving your opinion as to the effect of the language.

Q. Do you remember the exact words?

A. I don't remember the exact language.

The Court: The substance and effect?

A. They said they wanted the loading of the "Santrina"—that is the boat that belonged to the Juneau Spruce Corporation—and we had loaded it with fish boxes in breakdown and they said they felt that was their work and objected to the loading that we had done on that boat.

Q. You said something about breakdown—what do you mean?

A. I mean box shook, not put up in boxes—it was the pieces that make the boxes.

(Testimony of George B. Schmidt.)

Q. They objected to the Juneau Spruce Corporation's regular employees loading it? Is that it?

A. Yes, that is it.

Q. What did you say to them?

A. I told them it was our own boat and we felt that was our employees' work, and they stated that they felt that [523] everything that went over the rail was their work.

Q. Was anything further said?

A. I wrote this letter to Mr. Hawkins and put it in his lap.

Q. That was the end of the conversation?

A. That is right.

Q. I ask you, Mr. Schmidt, to read the last paragraph of that letter, with particular reference to what was actually loaded at that time.

A. "Yesterday the C.I.O. Longshoremen's Union representative——"

Mr. Andersen: I think he meant to read it to yourself.

Q. Just read it to yourself. Does that refresh your memory?

A. Yes, that refreshes my memory all right.

Q. Now, what was actually being loaded?

A. That was a scow that went to Prince Rupert and that was on our own equipment; that is, it was on the equipment of the Juneau Spruce Corporation, and was for trans-shipment from Prince Rupert by rail.

Q. Do you know, Mr. Schmidt, when, or during

(Testimony of George B. Schmidt.)

what period of time, during the operations of the Juneau Spruce Corporation, were longshoremen hired as you described before?

A. Well, from its inception as a corporation to October.

Q. Of what year? A. Of 1947. [524]

Q. And were there very many times when longshoremen were hired—how numerous were they?

A. There were not very many times that they were hired—probably, oh, just an estimate—probably ten or twelve times.

Q. Now, during this period that longshoremen were employed by the Juneau Spruce Corporation, who actually did the employment, who hired them?

A. I did.

Q. Did anyone else ever hire them?

A. Not to my knowledge.

Q. Now, did you have anyone assisting you at that time?

A. Yes—Stamm, Mr. Stamm was helping. He may have at my instigation, asked somebody to come in if I had to go out and wasn't able to get in touch with the longshoremen and had to go out around the plant. I may have delegated him to make the request of the longshore office, and I don't recall any specific time.

Q. Would you know about it every time they were hired? A. Oh, yes.

Q. Mr. Schmidt, when this incident occurred of the longshoremen coming down and doing carrier

(Testimony of George B. Schmidt.)

block work, do you know who those longshoremen were—who those men were? A. No, I don't.

Q. You don't know if they were the same ones that came at [525] the same time Mr. Bulcke was there? A. No, I don't.

Q. Do you know if those that came October 2 with Mr. Bulcke were the same persons that came October 18 to see you about the loading of the barge?

A. I couldn't identify them now.

Q. You don't remember now who they were?

A. No.

Mr. Banfield: If the Court please, I just want to check the complaint here and see if the allegations are the same as from previous testimony.

Q. Mr. Schmidt, where did the Juneau Spruce Corporation get its supplies of logging equipment, etc.? A. Mostly out of Seattle.

Q. And were they shipped to the plant here at Juneau?

A. Some were—what do you mean? Delivered at the plant?

Q. Yes.

A. Some, but very few of them. Most of them were shipped to the steamship dock.

Q. Then what happened to them?

A. Then we would have to pick them up from there.

Q. Where was the larger portion of lumber sold that was produced in 1947?

A. The larger portion was sold to the Army, to the U. S. Engineers. [526]

(Testimony of George B. Schmidt.)

Q. Was that during the entire year of 1947?

A. No; up until October.

Q. And after October?

A. Then we sold most of it down in the States, then.

Q. What method did the Juneau Spruce Corporation have in 1947 for disposing of its lumber; that is, what transportation system was used—water, rails, roads, etc.

A. Starting with the Army, after the lumber left the planing mill we delivered it on our dock to Army blocks—they had their own blocks—we set it on their blocks. They had their own carriers, and took it over to the Engineers' base.

Q. And after the Army quit buying in 1947 how was it transported?

A. We put it up in sling load lots. If we had an order for one million feet we prepared as much as we could and stacked it in the upper or lower yard, where we had facilities. When a ship came in we delivered it alongside the ship. The carriers——

Q. Where would the ship be from?

A. Seattle or the Westward, if we shipped to our own yards.

Q. I am going to ask some questions that may seem silly, but they are necessary. Are there any roads between Juneau and the places where the lumber was sold in the States? [527] A. No.

Q. Are there any roads between Juneau and any

(Testimony of George B. Schmidt.)

other town in Alaska? A. Except Douglas.

Q. You say "except Douglas." What do you mean?

A. There are no roads connecting no other towns with Juneau except the road to Douglas.

Q. Are there any railroads serving Juneau, Alaska? A. No.

Q. What method of water transportation was necessary in the operation of this business, if any?

A. Well, we had to either have steamboats, steamships or scows—either one.

Q. Now, Mr. Schmidt, do you know whether steamship service was interrupted in 1947?

A. Yes, there was a strike.

Q. Do you remember during what period of time it lasted?

A. It was from August, September, and I think a part of October, if I recall.

Q. Was there any regular steamship service between Seattle and Juneau in the fall of 1948?

A. Well, there was an interruption of service there on account of the strike; yes.

Q. During what period?

The Court: He has already answered that.

Mr. Banfield: No; not in 1948. That was 1947.

A. I don't recall the months now.

Q. Mr. Schmidt, in your services for Columbia Lumber Company at the present time, do you have any knowledge——

(Testimony of George B. Schmidt.)

Mr. Andersen: Could I interrupt? I didn't get the first part of your question, counsel.

Q. In doing your duties as an employee of the Columbia Lumber Company, do you have any knowledge of the operations of the Columbia Lumber Company in Sitka? A. Yes.

Q. Are you intimately acquainted with those operations? A. Well, yes.

Q. Do you know exactly what they do?

A. Yes.

Q. Have you been over there recently?

A. No.

Q. How many times have you been over there?

A I haven't been over there. I only know what they are doing from daily reports we get.

Q. From who?

A. The mill in Sitka.

Mr. Banfield: I don't believe the witness is qualified to testify as to what I wish, your Honor. That is all. You may cross-examine the witness.

Cross-Examination

By Mr. Paul:

Q. Mr. Schmidt, when you were describing your duties with the Juneau Lumber Mills you mentioned you were Vice President and Assistant Manager?

A. That is right.

Q. Was that your position at the end of the Juneau Lumber Mill operation here?

A. That is right.

Q. You don't mean that you had been Vice

(Testimony of George B. Schmidt.)

President and Assistant Manager ever since 1937, do you?

A. No. The first of 1939—from 1939 up to that time, I had been the accountant; 1937, 1938 and 1939, I was accountant and from then on, Vice President and Assistant Manager.

Q. And who was Vice President before you?

A. He is still a Vice President—F. E. McDermott.

Q. Do you know a J. McDermott?

A. That isn't J.—it is an F. E. If you look at his signature it looks like "J." but is F. E.

Q. Then some mistake might be made in typing?

A. Francis E.—it looks like J.

Q. Are you acquainted with Tom Gardner?

A. He was also—he sold out in 1939. He was part owner.

Q. Before we leave Mr. McDermott, do you say he was Vice President before you and continued on as one of the Vice [530] Presidents along with you? A. That is right.

Q. And when did his connection with the Company cease—the Juneau Lumber Mill?

A. It didn't cease until they sold out.

Q. April 30, 1947—for all practical effects?

A. Yes, that is right.

Q. While Mr. Gardner was connected with the Juneau Lumber Mills, did he occupy a position——

Mr. Strayer: If your Honor please, I am going

(Testimony of George B. Schmidt.)

to object to the question. I don't know where he is going or what the relevancy is. We didn't go into any of the operations of the Juneau Lumber Mill with this witness, and it doesn't appear to be proper cross-examination.

The Court: It doesn't appear to be within the scope of cross-examination.

Mr. Paul: It is preliminary, your Honor. I am asking first, your Honor, what this witness knows about. He was Assistant Manager and Vice President of the Juneau Lumber Mills—about his concern.

The Court: He wasn't asked anything about the Juneau Lumber Mills, as I recall.

Mr. Paul: He was asked, your Honor, about the practice of the Juneau Spruce Corporation.

The Court: Yes. [531]

Mr. Paul: I am entitled to ask whether that practice of the Juneau Spruce Corporation was the same practice and always existed or if there was a new practice, which he entitled or characterized as the Juneau Spruce Corporation's hiring longshoremen.

The Court: It would appear to be part of your own case and not cross-examination.

Mr. Paul: It places his testimony in a proper relation. I am certainly entitled to do that.

The Court: It might do that, but an objection is raised. This witness was called to testify to the operations of plaintiff, and not its predecessor, and

(Testimony of George B. Schmidt.)

there has not been an examination of the operation of its predecessor, and it is not within the scope of the direct examination, and it would appear, therefore, to be part of your case in chief.

Mr. Paul: I am also examining him for this purpose: that in the meeting of—the one at which Mr. Bulcke and Local 16 were present—the testimony, as it stands now, may lead one to draw inferences of a false representation. I am entitled to show that other inferences can be made.

Mr. Strayer: If the Court please——

Mr. Paul: And I have to go into the Juneau Lumber Mill practice to do that.

Mr. Strayer: The representations the witness testified to were at Sitka, Ketchikan and another place I don't [532] recall that longshoremen were doing the work Mr. Bulcke claimed here. It has nothing to do with the Juneau Lumber Mill.

The Court: Although the Court believes in being rather liberal in such matters—but it seems as against the objection that this could not possibly be proper cross-examination. The objection is sustained.

Q. At the time the Juneau Spruce Corporation took over, Mr. Schmidt, how many lumber carriers —by the way, what is the proper name, lumber carriers or hoists?

A. Lumber carriers. Some call it a hoister truck, but lumber carrier is what it most commonly is known as.

(Testimony of George B. Schmidt.)

Q. A four-wheel motor driven truck set way high in the air? A. Right.

Q. And carries a stack of lumber in between the wheels? A. Right.

Q. At the time the Juneau Spruce Corporation took over, did they take over any lumber carriers?

A. They took over all the assets of the corporation.

Q. I just want the number of lumber carriers they took over.

A. I think they took over three, I believe.

Q. And did the Juneau Spruce Corporation acquire any more lumber carriers?

A. Not to my knowledge.

Q. What were those lumber carriers used for around the yard? [533]

A. Transporting lumber from one place to another.

Q. For instance, in loading a ship—what function would the lumber carrier fulfill?

A. They delivered the lumber under the ship's sling.

Q. They would run into the yard, straddle a load there that was in position already, pick it up and run out to the face of the dock? A. Right.

Q. Where they would drop it again on a carrier block?

A. It was on the carrier block. They don't drop it on. They drop the block and all.

(Testimony of George B. Schmidt.)

Q. They carry their own carrier blocks with them?

A. They have to have it to get the lumber on. It goes under the block and lifts the block and the load all in one operation.

Q. And then deposits it at the face of the dock where the sling is attached?

A. That is right.

Q. Now, when Mr. Bulcke talked to you with members of Local 16 about doing some of this, about three of the men doing some of this work relating to carrier blocks, was any mention made of loading of two-wheel trucks? A. No.

Q. Or at any time, that two-wheel trucks had been loaded by longshoremen? [534]

A. The Juneau Spruce Corporation had no two-wheeled trucks. They discarded them.

Q. I am talking about at any time.

Mr. Strayer: I object to anything that preceded the take-over.

Mr. Paul: I don't mean to be presumptious. I believe it is entirely within the ruling of the Court—though counsel feels I am pursuing the same reasoning, it is the same reasoning, but I am proceeding from a different viewpoint. I am trying to determine what the full extent of the conversation was between Bulcke and Local 16 on the one hand and George Schmidt on the other hand.

The Court: That is entirely proper. What is your question?

(Testimony of George B. Schmidt.)

Q. Was there any talk at the time Mr. Bulcke was there with Local 16, on the one hand, and you on the other—this was about October 2, 1947—about the loading of two-wheeled trucks at this plant? A. No.

Q. At any time?

Q. What do you mean by "any time"?

Q. Any time within your knowledge; that would be since 1937.

Mr. Banfield: If the Court please, it is the conversation of October 2. He is now asking for conversation about the Juneau Lumber Mill since 1937. It is not proper [535] cross-examination.

The Court: If he has reason to believe that that was part of the conversation, he has a right to bring it out. I don't know if he has any reason.

Mr. Banfield: He was questioned about what was said by Mr. Bulcke as to whether they used two-wheeled carts, but not what was done in 1937.

The Court: The question is to what the conversation there was.

Mr. Paul: On October 2, 1947.

A. Am I to answer, your Honor?

The Court: Yes.

Q. Yes.

A. Nothing was said about two-wheeled carts.

Q. Was there anything said at this meeting on October 2, 1947, about the loading by longshoremen of any type of vehicle at this sawmill, other than lumber carriers? A. No.

(Testimony of George B. Schmidt.)

Q. At any time I am talking about, at this plant?

Mr. Strayer: You are talking about the conversation of October 2 with Mr. Bulcke about the loading of trucks, is that right?

Mr. Paul: That is right.

A. Nothing, to my knowledge.

Q. Whether it was mentioned in the conversation or not, Mr. [536] Schmidt? Wasn't it understood by you and the longshoremen?

Mr. Strayer: I object.

Mr. Paul: It is cross-examination. I can ask for an understanding.

Mr. Strayer: Obviously this witness can't testify to an understanding the longshoremen had. He might testify as to what was in his own mind.

The Court: True; but on cross-examination if he wants to ask a question of that kind, it is not improper. Objection overruled.

A. Will you please repeat the question?

Q. Irrespective of whether anything was definitely said in the conversation, was it understood by you and by the longshoremen that there had been considerable work done in the past by the longshoremen in transporting lumber from the yard to the face of the dock at the sawmill?

Mr. Strayer: I object to that now on the ground that counsel obviously is referring to the predecessor company, the Juneau Lumber Mills. It is not proper cross-examination. He is not talk-

(Testimony of George B. Schmidt.)

ing about any conversation but about some knowledge the parties had at the time of the conversation.

The Court: The witness testified that when this demand was made on him he had to make inquiries other places because he didn't know there was any such practice, and of [537] course he may be cross-examined on that.

Mr. Strayer: That practice he made inquiry of was a practice of hauling lumber to the bullrail at Sitka, Ketchikan, and one other place.

Mr. Banfield: It was as to the carrier blocks.

Mr. Strayer: The carrier blocks.

Mr. Banfield: Carrier blocks, other places.

The Court: My recollection of the testimony is that the longshoremen demanded the work of moving the lumber from the place of storage to the rail.

Mr. Strayer: If the Court please, I must take an exception. I will refer to the record or ask the witness.

Mr. Banfield: What they wanted was after the mill employees lifted it and dropped it to the deck, they wanted a longshoreman to be there so that when it was dropped he could put a carrier block under it, and another longshoreman at the bullrail to pick up the carrier block when the hoist went away, and there was no representation by Mr. Bulcke to transport it; it was for one man to put the block under it and one man to pick up the block.

(Testimony of George B. Schmidt.)

Mr. Andersen: Your Honor is clearly right. It was testified that on October 2 Mr. Bulcke came and suggested to Mr. Schmidt that they be permitted to handle it from the last place of rest in the yard to and on the dock. That is what Mr. Schmidt testified. There is no question about it.

The Court: I think so too.

Mr. Andersen: Isn't that right?

A. No; what he demanded—he called it "make ready" and the make ready portion was to put those blocks underneath the loads after they were taken from the lift-forks.

Mr. Andersen: May it please the Court, my notes show clearly—I keep correct notes, your Honor—that when Mr. Bulcke came in in the early part of October he talked to Mr. Schmidt about handling the lumber from the last place of rest out of the yard to down on the dock and on the boat. Mr. Schmidt testified to that at first, I believe, or we can have the Reporter read the record.

A. There was no other means of transportation at that time except the carriers.

The Court: Well, if counsel think it is of such great importance, we will have the record read.

Mr. Banfield: I will ask that the record be read on that entire subject.

Mr. Andersen: I don't say it is so important—maybe it is. I have it in black and white.

Mr. Banfield: If the Court please, this might have been what happened——

(Testimony of George B. Schmidt.)

Mr. Andersen: Shouldn't the facts——

Mr. Banfield: He probably said what he wanted was the make ready work from the last place of rest to the bullrail. [539] All right. What is make ready work? What did he mean by that, and what did Mr. Bulcke say? He said he wanted—he stated he wanted to—a man to put the block in place and a man to throw it in the pile when they were through with it, and a foreman over them.

The Court: Is there——

Mr. Andersen: If they want to change that, Mr. Hawkins, may it please the Court, testified they wanted to move it from the last place of rest on the dock down to the—in the yard to the rail. Then you will recall the testimony that Mr. Albright came in and talked to one of the managers and said "I think that is a little unreasonable. I think all the longshoremen here should ask for is from the bullrail out, or the dock out." All the witnesses testified that the longshoremen wanted to take it from the yard down to the dock and from there on. Mr. Albright said he thought it should be modified and it should be only from the dock out. I think that is what was testified to. If you want to strike it, let's have it from the dock out. We will be satisfied.

Mr. Banfield: It is quite important to show the inconsistency of the longshoremen at different times and by different persons. That is what I am showing here.

(Testimony of George B. Schmidt.)

Mr. Paul: I am willing to show by the same theory that it is not inconsistent. [540]

The Court: I was in hopes counsel would agree that after all, there is no dispute to amount to anything of what the parties to this controversy demanded, and that if so, would make it unnecessary——

Mr. Andersen: Correct, your Honor.

The Court: To go into this.

Mr. Andersen: I think it is perfectly clear that on April 10 according to the I.W.A. and all the witnesses for the plaintiff so far, the work the longshoremen asked for on that day and the work the I.W.A. was perfectly willing to turn over to the longshoremen, was moving cargo from the dock out. That is what was testified. There doesn't seem to be any argument on it.

The Court: That is the way it strikes me. Is it inconsistent or different from a later or earlier time?

Mr. Banfield: That is right.

The Court: It might be due entirely to concessions.

Mr. Banfield: And there might be entirely different factors. Before this is over I intend to show the practice in this community.

The Court: The only way to resolve this particular dispute, unless counsel can agree, is to have the Reporter read the record.

Mr. Andersen: How long does a person have to

(Testimony of George B. Schmidt.)

remain in the Territory before he can vote? [541]

The Court: Do you expect to be here long enough?

Mr. Andersen: I am afraid so, your Honor.

The Court: Well, I think you joined in the request.

Mr. Andersen: I am perfectly willing to rest it on the statement of the Court and save time. I think the Court stated it eminently correctly. So far as we are concerned, we will forget the record at this point.

Mr. Banfield: We will too, so long as you don't examine on any claim.

The Court: Do counsel agree that the reading of the record may be dispensed with?

Mr. Banfield: We agree, your Honor. They can cross-examine this witness as to what Mr. Bulcke said and cross-examine about the work of placing carrier blocks and the jobs the foreman was to do.

The Court: You may proceed.

Mr. Paul: Am I allowed to resolve any inconsistencies?

The Court: Do you remember the last question?

Mr. Paul: Was there an understanding?

Mr. Andersen: Just a second.

Q. In your conversation, in which Bulcke and Local 16 were on one side and you were representing the Company, Mr. Schmidt, was there any talk of past practice at this particular plant?

A. No. [542]

(Testimony of George B. Schmidt.)

Q. Was there any discussion between the two groups as to whether this use of carriers was a new practice? A. No.

Q. I am going back, even to the necessity of going back in your memory as much as five years——

Mr. Banfield: If the Court please it wasn't said five years ago, it was said October 2.

Mr. Paul: It depends what he understands we mean by past practice.

Q. As much as five years?

A. Nothing was said by Bulcke about anything in the past. It was the present situation.

Q. I am talking about the longshoremen too that were there with him.

A. No. Bulcke did all the talking.

Q. Was there any offer of negotiation made, request to bargain made, by anyone present there?

A. No; just a statement of what they wanted.

Q. It was assumed that bargaining would take place and then it got down to what you were going to bargain about, was that the situation?

A. No. I told them I would have to take it up with different people to find out whether that was common practice.

Q. You were willing to talk to Mr. Bulcke and Local 16?

A. Well, I talked with them, but I didn't agree to take any [543] action toward letting them have that work.

(Testimony of George B. Schmidt.)

Q. In other words, you wanted to find out whether the actual offer that he had made, as you sometimes call "demand," the actual offer he made could be supported by evidence?

A. That is what I was trying to find out; yes.

Q. I believe you testified that thereafter you had not heard any similar request or demand or offer by the longshoremen? A. No.

Q. Apparently it was abandoned?

A. It wasn't abandoned.

Q. I mean by the longshoremen? A. No.

Q. What do you mean by that?

A. I told you—I think I testified on the next boat that came in that——

Q. Outside of that one event.

A. But that took place after the conversation.

Q. It never happened again? A. No.

Q. Who was the Manager when the Juneau Spruce Corporation took over on May—it was midnight, April 30, 1947? A. Mr. Hawkins.

(Whereupon Court recessed for ten minutes, reconvening as per recess with all parties present as heretofore and the [544] jury all present in the box; whereupon the witness George B. Schmidt resumed the witness stand and the trial proceeded as follows:)

Cross-Examination

By Mr. Andersen:

Q. Just a few questions, Mr. Schmidt. On or

(Testimony of George B. Schmidt.)

about the second when Germain Bulcke came in and had a talk with you——

A. I wasn't sure of his name, but it was Mr. Bulcke.

Q. The man you referred to, whatever the name is, in any event. A. That is right.

Q. He came in with somebody from Local 16?

A. Right.

Q. He told you they wanted to discuss the longshoremen's responsibilities?

A. He stated what responsibilities they wanted to talk about.

Q. He told you the longshoremen here would like to move the lumber from the last place of rest down to the dock and thence over the rail onto the boat?

A. The make ready portion; he didn't intend that the men should use the lift-forks or the carrier, but place the blocks for it.

Q. To move it on the dock?

A. To move it on the dock, and take the blocks away from under the load after the load was lifted.

Q. And take it over the rail onto the vessel?

A. That is right.

Q. Whatever type of vessel it may be. I assume the discussion lasted five, ten, fifteen, twenty minutes? A. Right.

Q. You said you would make no decision and would discuss it with other people?

A. Investigate it.

(Testimony of George B. Schmidt.)

Q. And that, in effect, was the end of it?

A. Yes.

Q. You never saw Mr. Bulcke from that day to this? A. That is right.

Q. In the same conversation, you talked about the blocks on the dock—moving the blocks away?

A. Part of it was that one man would put them under and one man would take them away, and then a boss.

Q. The blocks run fifteen pounds or thereabouts? A. Yes.

Q. The reason they are moved away is that the work is done fairly quickly, as quickly as it can be done, and they might get in the way of the carriers, and so they have to be moved away?

A. Yes, but of course, I understood part of a slingman's job was to move them.

Q. They have to be moved? [546]

A. Yes.

Q. They belong to you? A. Yes.

Q. And if they are not moved fairly quickly a carrier coming out might run into them?

A. Right.

Q. Is there a blind spot on those carriers?

A. I have never been up on one; I couldn't tell you.

Q. The driver sits about ten feet high in the air?

A. Probably that much.

Q. He sits on one side of it? A. Yes.

Q. Front or rear?

(Testimony of George B. Schmidt.)

A. He sits in front; it goes either way, so I couldn't tell you.

Q. One time on the rear and another time on the front? A. Yes.

Q. So, when riding on the rear it is difficult to see everything in front, particularly off to the odd side? A. Right.

Q. Unless the blocks are removed they are a great hazard? A. Yes.

Q. They wanted them picked up quickly and moved away?

A. I don't think that was the purpose of their request.

Q. Is that what they said? [547]

A. They said they wanted the placing and removing, the getting ready.

Q. After the load was on the dock they wanted to move these things out of the way?

A. Right.

Q. And, of course, get paid for it?

A. Right.

Q. They were your blocks and were used time after time, over again?

A. That was the job of the slingmen. That is past practice. The slingmen remove those blocks when the load is lifted.

Q. In any event, they asked you for this work?

A. That is right.

Q. And then that completes the conversation?

A. Right.

(Testimony of George B. Schmidt.)

Q. From that time, you never saw Mr. Bulcke again? A. Right.

Q. Sometime after that, around the middle of October, you had a conversation with some men from Local 16? A. Right.

Q. They came down and talked to you about loading all the water-borne commerce?

A. Yes.

Q. Your barge, or your barges, or both? Isn't that true? A. Yes. [548]

Q. You personally had been hiring longshoremen down there for many years, hadn't you?

Mr. Strayer: I object. It is not proper cross-examination. It should be only the Juneau Spruce Corporation.

The Court: I think that the question is not objectionable on that ground. Objection overruled.

A. Yes, sir.

Q. And as I understand it, you had worked for the Juneau Lumber Company some number of years and you stopped working for them on April 30, the last day of the month, and immediately switched over and went to work for the Juneau Spruce, July 1, the following month?

A. Yes.

Q. And there was no difference in the manner in which longshoremen were hired?

Mr. Strayer: The same objection—it is not proper cross-examination.

The Court: I think this is different. I think

(Testimony of George B. Schmidt.)

the question before was to the operations of the predecessor company, but this witness testified that when this demand was made for this work, that he had to inquire elsewhere as to what the practice had been, from which the inference would naturally be made that that certainly had not been the practice, so far as he knew, and therefore that point is open to inquiry. Objection overruled. [549]

A. Will you repeat the question?

Mr. Andersen: I want to be fair to the Court. We have different things in mind.

The Court: My ruling is——

Mr. Andersen: May I withdraw the question? I would be sort of taking an advantage. May I withdraw it?

Q. This conversation you had with a delegation from Local 16 sometime in October—they had a discussion with you about the manner in which longshoremen were hired, didn't they?

A. They were——

Q. Could I suggest this, Mr. Schmidt? That you sort of answer the questions first, then if there is an explanation, if it is necessary, you can give it?

A. No.

Q. Were these men you had seen working on the dock there from time to time over a period of years?

A. Yes.

Q. You say you knew them?

A. I knew them.

Q. All these men had been down working on this

(Testimony of George B. Schmidt.)

particular dock, hadn't they, from time to time?

Mr. Strayer: I submit that is not proper.

Mr. Andersen: I submit it is eminently proper.

The Court: Objection overruled. [550]

Q. These men had been down working on the dock there from time to time?

A. Yes, they had.

Q. What they in effect told you was that they would now like a contract from the Juneau Spruce Corporation, the same type of contract they had had with the Juneau Lumber Corporation for the loading of all of this water-borne commerce?

A. They didn't make any demand for a contract. The only specific demand was specifically for the work we had done in connection with that barge.

Q. In other words, didn't they tell you they had been doing all longshore work in this vicinity, and the loading of barges was really their work, and they felt it belonged to them?

A. No; that wasn't the conversation at that time. They just said that was their sentiment toward that particular barge and they felt they should have jurisdiction over everything that went over the rail onto those barges.

Q. They told you that due to the manner in which they had been working here in Juneau that they felt the loading of any type of water-borne commerce over the dock or over the bullrail, as you have intelligibly expressed it, was longshore work and they should have it?

(Testimony of George B. Schmidt.)

A. They didn't put it that way. [551]

Q. Substantially?

A. No. They didn't refer to anything as previous practice, to any previous practice at all.

Q. But you had been hiring these men for years, hadn't you? A. Yes, I have hired men.

Q. When you talked to them you knew that they were there to talk about doing the same type of work they had done for years; that is, loading barges and boats, isn't that true?

A. I wouldn't think so; no.

Q. Tell me, had you ever had a delegation of longshoremen talk to you at any previous time regarding work? A. Not of that nature.

Mr. Banfield: We object to any cross-examination except what was brought up on direct examination. He wants to go back here for twenty years.

Mr. Andersen: I have no desire to go back twenty years. I am trying to ascertain what was in the minds of the parties at the time. Many times people talk without saying a word, if people understand them. I am trying to ascertain the state of mind of the witness, that is all. When they came in there, for instance, he did not ask their names. He knew Mr. Wheat and Mr. McCammon. He didn't ask their names—he knew as soon as they said something, he got a quick grasp of the situation. Mr. Schmidt is an intelligent man.

The Court: Anything previous would not be within the [552] scope of the cross-examination.

(Testimony of George B. Schmidt.)

Q. On this occasion, how long did they discuss this matter with you?

A. Probably ten or fifteen minutes.

Q. Was it limited to procuring the work that went over the rail?

A. They objected to that particular loading, and stated they felt they should have had that and any future loading of that nature.

Q. They felt they should have the loading of any water-borne commerce, is that correct?

A. They were specific about barges.

Q. And they were specific about barges?

A. Yes.

Q. They were already doing, shall we say, commercial work, is that correct?

A. They were doing all the loading of steamships and small boats where the possession of the boat was in the name—like, for instance, the Juneau Spruce Corporation owned a boat. They didn't do that—but for outsiders where the fellows asked, we had a chance to pass that expense on to the other man, and if they asked for longshoremen we gave them to them.

Q. If you got out of the expense you didn't mind a bit? A. Right. [553]

Q. And it was billed to other people?

A. Yes.

Q. Boiling this down, they came in and talked to you and said they thought they had a right to the work of loading cargo over the rail, is that right? Is it?

A. That is right.

(Testimony of George E. Schmidt.)

Q. You told them in the discussion that you would make no answer at that time, but you would discuss it with your superiors?

A. That is right.

Q. Did you thereafter discuss it with any representatives of Local 16 again?

A. No, I did not. I passed that on to Mr. Hawkins and Mr. Card.

Q. That is the last time?

A. The last I had to do with it.

Q. You discussed this general problem on only these two occasions? A. That is right.

Q. You mentioned on direct examination, as I recall it, you hired longshoremen there up until October? A. Right.

Q. That is from the time the Juneau Spruce, the new corporation, was formed—you hired longshoremen up until October—is that correct? [554]

A. That is correct.

Q. And could you tell us, or putting it this way, the longshore expense there wasn't a very great expense there, was it? A. No.

Mr. Andersen: That is all. Thank you.

Mr. Banfield: Thank you, Mr. Schmidt.

(Witness excused.)

THEODORE NORTON YOUNGS

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Strayer:

Q. Will you give us your name?

A. Theodore Norton Youngs.

Q. Y-o-u-n-g-s? A. Yes.

Q. Where do you live?

A. Prince Rupert, B. C.

Q. How long have you lived there?

A. Since 1939.

Q. What is your occupation?

A. Building Supervisor for the Dominion Government and business agent for two lumber companies.

Q. Mr. Youngs, do you have any connection, business relation, [555] with the Juneau Spruce Corporation?

A. I represented the Juneau Spruce Corporation in transfering lumber from barges to railroad cars.

Q. How long have you done so?

A. From early last year, early last summer.

Q. Early in 1948? A. Early in 1948.

Q. What are your duties in that respect?

A. To arrange with the stevedoring company for transfering lumber from the barge to the railroad company.

Q. Is there only one stevedoring company?

(Testimony of Theodore Norton Youngs.)

A. Only one of that type.

Q. What is its name?

A. It is the Pacific Stevedoring Company.

Q. Do the men who do the actual unloading belong to a union?

A. The longshoremen of the I.L.W.U.

Q. Do you know the number of the local over there? A. 505.

Q. Are you acquainted with the officers of that local union?

A. I know the President and Secretary.

Mr. Andersen: Could I interrupt? I make the same objection to the testimony of Mr. Schmidt as I previously made to the other witnesses', in so far as the International is concerned. I assume the Court will again take it under submission. [556]

The Court: You mean your extra Territorial objection?

Mr. Andersen: I mean as to Mr. Schmidt and this gentleman—the same extra Territorial objection.

The Court: Both objections are overruled.

Mr. Andersen: That is, the one will be taken under submission?

The Court: The ruling will be the same as far as Mr. Schmidt's testimony is concerned, and overruled so far as the objection to this witness's testimony is concerned.

Q. What is the name of the President and Secretary of Local 505, I.L.W.U. at Prince Rupert?

A. The President is William Rothwell. The Secretary is W. A. Pilfold.

(Testimony of Theodore Norton Youngs.)

Q. Mr. Youngs, was there an occasion about August, 1948, when a barge load of lumber of the Juneau Spruce Corporation arrived at Prince Rupert?

A. There was, on August 30, 1948.

Q. There was on August 30, 1948. Did you have any duties in connection with that arrival?

A. Yes. I was supposed to transfer it, have it unloaded and load it on railroad cars for the shipment to the States.

Q. Tell what you did in pursuance to that to get the barges unloaded.

Mr. Andersen: I object to that as incompetent and [557] irrelevant.

The Court: Objection overruled.

A. I contacted the Manager of stevedoring company, Mr. Ritchie. I requested and asked to have it arranged to have it transferred—unload and transferred.

Q. What was the reply?

Mr. Andersen: To which I will object as hearsay, may it please the Court.

The Court: Objection overruled.

A. He advised me he couldn't arrange to have it unloaded.

Q. Did he advise you why?

Mr. Andersen: The same objection may it please the Court—hearsay.

The Court: Isn't that a defendant, I.L.W.U.?

Mr. Strayer: No, this is a stevedoring company.

(Testimony of Theodore Norton Youngs.)

Mr. Andersen: He is talking about a stevedoring company.

Mr. Strayer: I expect to follow this up, your Honor. This is merely preliminary.

The Court: I think what should be stated is what was done, rather than what was said, by the witness and officers of the company.

Mr. Strayer: I will withdraw the question.

Q. You made a request to unload it? Was it unloaded? A. It was not. [558]

Q. Did you make any other request of Mr. Ritchie?

A. I wrote to Mr. Ritchie as Manager of the stevedoring company asking him to have the lumber unloaded.

Mr. Andersen: I move that be stricken as self-serving and incompetent.

Mr. Strayer: It will be connected directly with members of the I.L.W.U.

The Court: What is the question?

Court Reporter: "Did you make any other request of Mr. Ritchie?" A. "I wrote to Mr. Ritchie as Manager of the stevedoring company asking him to have the lumber unloaded."

Mr. Andersen: I move that be stricken on the best evidence objection.

The Court: Objection overruled.

Q. Have you finished your answer?

A. I asked Mr. Ritchie to give me a reply in writing, which he did.

Q. Did you get a reply in writing?

(Testimony of Theodore Norton Youngs.)

A I got a reply in writing from Mr. Ritchie.

Q. You talked with Mr. Ritchie personally about the reply?

A. Yes. I asked Mr. Ritchie was it definite he couldn't handle it.

Mr. Andersen: I object to that as self-serving, incompetent and immaterial. [559]

The Court: It is hearsay.

Clerk of Court: The letter dated August 31, 1948, has been marked Plaintiff's Exhibit for identification No. 11.

Mr. Andersen: The letter of what, please?

Clerk of Court: The letter of August 31, 1948. The letter addressed to Mr. D. Ritchie, Manager, Pacific Stevedoring and Contracting Company, has been marked Plaintiff's Exhibit No. 12 for identification.

Q. Mr. Youngs, I hand you Plaintiff's Exhibit No. 11 for identification, and ask you if that is the reply you got from Mr. Ritchie in response to your request. A. That is.

Q. I will hand you the document marked Plaintiff's Exhibit 12 for identification and ask you if you saw the original of that letter?

A. I did. I saw the original and asked Mr. Ritchie for a copy.

Q. Is this a copy of the letter which Mr. Ritchie furnished you? A. It is.

Q. Was that original of Plaintiff's Exhibit 12 on a letterhead? A. It was.

Q. And what was the letterhead?

(Testimony of Theodore Norton Youngs.)

A. Local 505, I.L.W.U. [560]

Mr. Andersen: I am going to object to that as hearsay, may it please the Court—incompetent, irrelevant and immaterial.

The Court: It hasn't been offered yet.

Q. Was the original of that letter, Plaintiff's Exhibit 12—you saw it in Mr. Ritchie's office?

A. I did.

Q. What was the signature?

A. The signature was W. Rothwell, the President, and W. A. Pilfold, Secretary of the Local.

Q. W. Rothwell is President of Local 505 and W. A. Pilfold is Secretary of that Union?

A. That is right.

Q. And Mr. Ritchie furnished you a copy of Exhibit 12 as a true copy? A. Right.

Mr. Strayer: I offer these letters in evidence. Do you mind if I ask another question?

Mr. Andersen: Go ahead.

Q. I should ask you where is the original of that letter of which Plaintiff's Exhibit 12 for identification is a copy?

A. I presume it would be in the file of Mr. Ritchie, the Manager of the stevedoring company.

Q. And he is in Prince Rupert? [561]

A. In Prince Rupert.

The Court: Do you object?

Mr. Andersen: Yes. In addition to my extra Territorial objection, to which the Court referred, we object that there is no sufficient foundation laid under the best evidence rule and that it is in-

(Testimony of Theodore Norton Youngs.)

competent, irrelevant and immaterial and hearsay, your Honor.

The Court: What do you claim, so far as the admissibility of the letter marked Exhibit No. 11 is concerned?

Mr. Strayer: That Exhibit 11 is admissible for the purpose of showing the general response the Juneau Spruce Corporation got to its attempts.

The Court: I overlooked the fact that this was addressed to the plaintiff. May I see them again? I think I got them twisted.

Mr. Strayer: The rule of law is that wherever conduct of any person becomes material and here stevedores' was material.

The Court: I overlooked the fact that it was addressed to the plaintiff. Will you let me see it again? The objection is overruled. They may be admitted.

Clerk of Court: They have been marked Plaintiff's Exhibits 11 and 12 in the same order as they were marked for identification.

Mr. Andersen: I believe I have the objection of [562] self-serving to Exhibit 11, your Honor.

The Court: Neither of these is from the plaintiff so it is difficult to see how either one could be self-serving. They don't purport to be made by plaintiff or its officers.

Mr. Andersen: Neither one purports to be, but the evidence may be self-serving, whether a letter is written by or to the plaintiff it may still be self-serving. Of course, both are hearsay.

(Testimony of Theodore Norton Youngs.)

The Court: The only "self" the law is concerned with, as I understand it, is one of the parties themselves.

Mr. Andersen: The Court of course understands the matter of the best evidence objection to Exhibit 12?

The Court: It has been shown that it is out of the jurisdiction of the Court.

Mr. Strayer: Plaintiff's Exhibit 11 is headed "Pacific Stevedoring and Contracting Company, Ltd., Prince Rupert, B. C., August 31, 1948. Juneau Spruce Mill, Mr. T. Norton Youngs, agent, Prince Rupert, B. C. Dear Sir: We thank you for your letter of today's date, in which you asked us to unload a scow load of lumber now docked at the Ocean Dock. We have advised our longshoremen's Union of the labor condition under which this scow was loaded at Juneau. Our longshoremen's union wired the International Longshoremen's & Warehousemen's Union Head Office, Vancouver, B. C., [563] of this current labor situation at Juneau. Our Local Union has been told by their Head office of Vancouver to refrain from unloading until the trouble between the Longshoremen's Union at Juneau and the Mill at Juneau has been settled. We deeply regret our inability to unload this lumber under these conditions. However, if and when your labor troubles are settled, we will be only too pleased to handle any shipments you may wish to ship through the Port of Prince Rupert. Yours truly, Pacific Stevedoring and Con-

(Testimony of Theodore Norton Youngs.)

tracting Company, Ltd., per A. D. Ritchie, Manager." Plaintiff's Exhibit 12 is headed "I.L.W.U. Local 505-CIO, P.O. Box 531, Prince Rupert, B. C., Mr. D. Ritchie, Manager Pacific Stevedoring and Contracting Co., Prince Rupert, B. C. Sir: This is to advise you that the membership of the above Association will not become involved in the labor trouble in connection with the recently arrived scowload of lumber from Juneau, Alaska. On advice from our headquarters in Vancouver, the matter is between the Juneau Spruce Corporation and the longshoremen of Juneau, Alaska, also with the International Woodworkers of America. Yours truly, President W. Rothwell, Secretary, W. A. Pilfold."

Q. Mr. Youngs, upon receipt of this information, I will ask you whether you communicated that information to the Juneau Spruce Corporation? A. I did. [564]

Q. Now, thereafter did you have occasion to talk with anyone—strike that. Was the barge unloaded there at Prince Rupert? A. It was not.

Q. Do you know where it went from there?

A. On instructions to me, I advised the Captain to take it to Tacoma.

Q. Was it still loaded when it left Prince Rupert? A. It was.

Q. Was there any time thereafter, after August 31, 1948, that you talked with anyone in regard to the possibility of unloading barges of lumber at Prince Rupert?

(Testimony of Theodore Norton Youngs.)

A. Yes, on September 30, 1948.

Q. And did you receive a call from anyone on that date?

A. I received a telephone call from the Secretary of the Prince Rupert Chamber of Commerce, and he asked me to attend the meeting.

Q. Where? A. At the Secretary's office.

Q. Who was at the meeting?

A. The Secretary introduced me to Mr. Boochever of Juneau. Mr. A. D. Ritchie, the Manager of the Pacific Stevedoring Company was there, and he introduced me to Mr. John Berry, International representative of the I.L.W.U.

Q. Do you know who Mr. Boochever was? [565]

A. Mr. Boochever was introduced as an attorney from Juneau representing the Juneau Spruce Corporation.

Q. Did they tell you what the meeting was about?

A. Mr. Boochever asked Mr. Berry if Local 505 in Prince Rupert could handle shipments from the Juneau Spruce Corporation.

Mr. Andersen: I am going to object to all of this, may it please the Court. In so far as the International is concerned there is no foundation at all, may it please the Court, and it is hearsay so far as these defendants are concerned.

The Court: Objection overruled.

A. Mr. Berry replied that they could not handle it while the present labor trouble was on in Juneau and stated that he had—it was on his in-

(Testimony of Theodore Norton Youngs.)

structions that the Local was not handling it. Mr. Boochever asked him why and why he had thus instructed the Local, and Mr. Berry stated that his information was to the effect that the Juneau longshoremen weren't getting work they were supposed to have and were losing one-third of their income. Mr. Boochever then asked him where he got that information, and he said that he got it from his San Francisco headquarters. He said that the Local would not be able to unload lumber from the Juneau Spruce while the trouble was on in Juneau.

Q. Was that all the conversation? [566]

A. I believe so.

Q. Do you remember any mention in the conversation of Vern Albright?

Mr. Andersen: Beg pardon?

Q. Was there any mention in the conversation of Vern Albright?

Mr. Andersen: I object to that as leading and suggestive, may it please the Court.

The Court: Objection overruled.

A. Mr. Berry stated that Vern Albright phoned him from Prince Rupert when the barge was there on August 30, and he, Berry, told Mr. Albright he didn't want any picketing in Prince Rupert. Mr. Albright said—Berry said it was Mr. Albright said in a joking manner if any picketing was done he, Albright, would do it himself.

Q. Is that substantially all the discussion at that time? A. It was.

Q. Did you talk with anyone else that day in

(Testimony of Theodore Norton Youngs.)

an effort to find out if lumber could be moved through Prince Rupert?

A. I introduced Mr. Boechever to Mr. Pilfold, the Secretary——

Q. The Secretary of Local 505, I.L.W.U.?

A. Yes.

Q. Where was that conversation held?

A. On the street in Prince Rupert.

Q. Will you tell us what took place at that conversation?

A. I introduced Mr. Boochever as being from the Juneau Spruce [567] and being anxious to see lumber go through Prince Rupert again.

Mr. Andersen: The same objection to this line of questioning, may it please the Court.

The Court: Mr. Pilfold was Secretary of the I.L.W.U.? A. Yes.

The Court: Objection overruled.

A. And Mr. Boochever asked Mr. Pilfold if the Local in Prince Rupert would handle further shipments. Mr. Pilfold said they would not. He said, at the time the barge was there on August 30, Mr. Guy—Joe Guy—had spoken to Mr. Pilfold in Prince Rupert and to the members of the Local, and had told them that the longshoremen in Juneau were not getting work they considered they were entitled to, and told them they had been told by the management of the original Juneau Lumber Company that the same arrangement would continue, as they had before, would continue when

(Testimony of Theodore Norton Youngs.)

the new company took it over, and such hadn't been the case, and they hadn't gotten work they thought they were entitled to. After this conversation Mr. Pilfold said Prince Rupert would not handle lumber from Juneau Spruce while the picket line was on the lumber mill in Juneau.

Q. That conversation about work done for the former company, as I understood it, Pilfold understood that was a statement made by Joe Guy? [568]

A. He did.

Q. Did you talk with anybody else in Prince Rupert that same day?

A. I also introduced Mr. Boochever to William Rothwell, the President of the I.L.W.U. Local.

Q. Will you relate the conversation with Mr. Rothwell?

A. It was along similar lines. Mr. Boochever asked if the Local could handle lumber from Juneau Spruce. Mr. Rothwell said they could not under present conditions while the picket line was on. He said while the barge was in Prince Rupert on August 30 Mr. Albright and Mr. Guy both talked to the Local and had advised them of the picket line here and that they felt they weren't getting a fair treatment in the work and that they had lost approximately one-third of their income through not getting this work.

Q. Was that all the conversation with Mr. Rothwell? A. I believe so.

Q. Was Mr. Rothwell asked regarding his opinion of future unloading of shipments?

(Testimony of Theodore Norton Youngs.)

A. He said they wouldn't unload shipments until they got word from headquarters that the trouble was cleared up.

Q. Did he say what headquarters?

A. Vancouver headquarters.

Q. Mr. Berry's office?

A. He did say Mr. John Berry, their representative, as I [569] understood it.

Q. Did you ever again talk to Mr. John Berry?

A. Over the telephone, yes.

Q. When was that?

A. Last week from Juneau.

Q. Do you recall the date?

A. Last Thursday, whenever that was; the 28, April the 28.

Q. You put in a long distance call to Mr. Berry?

A. I asked central to get me the office of the International Representative of the I.L.W.U. in Vancouver, British Columbia.

Q. And did you get him?

A. Central called me to the phone while they were checking with Vancouver, and I heard the Vancouver operator give them the telephone number which she said was that office's telephone number. I was then connected.

Q. Did you talk to Mr. Berry?

A. I asked if that was the office of the International Representative of the I.L.W.U., and he said it was.

Mr. Andersen: I object to that as hearsay.

(Testimony of Theodore Norton Youngs.)

Mr. Strayer: It is not hearsay.

The Court: Objection overruled.

A. He said it was his office, and I asked who the International [570] Representative was. He said it was Mr. John Berry.

Mr. Andersen: Same objection, may it please the Court.

The Court: Overruled.

A. I asked if Mr. Berry was there. He said he was not there, that he had left for New Westminster, the office of the New Westminster Local, and he gave me the phone number which I had central call, and the New Westminster office answered and said that Mr. Berry, the International Representative, had been there but had left for his home.

Mr. Andersen: I move that be stricken as hearsay, may it please the Court.

The Court: It is all with one of the agents of the defendant. Motion denied.

Q. Go ahead, Mr. Youngs.

A. After about an hour's delay I contacted Mr. Berry's home, the phone number given me by the office in New Westminster. Mr. Berry answered the phone, and I asked him was that Mr. John Berry, the International Representative. He said it was. I asked him if he remembered meeting me in Prince Rupert last September. He said he did. I introduced myself over the phone, and he remembered me. I asked what the status of lumber would

(Testimony of Theodore Norton Youngs.)

be going through Prince Rupert now from Juneau Spruce, and he said he had heard—— [571]

Mr Andersen: It is understood my same objection goes to all of this your Honor?

The Court: Yes.

A. He said he had heard of the National Labor Relations Board's ruling, but that Vern Albright said it didn't make any difference, that the situation was the same: I asked about his own ruling or his headquarters' ruling on it. He said he would call his head office in San Francisco that night and attempt to find out and contact me here in Juneau next day.

Q. Was that all the conversation?

A. That was all.

Q. Did he call you next day?

A. I had to return to Prince Rupert without hearing from him at all, so in Prince Rupert on Monday this week, May the 2nd, I called the office of the International Representative in Vancouver of the I.L.W.U. Mr. Berry answered the phone, and I asked what he had heard from the San Francisco office and was calling him since I hadn't heard from him. He said he had just then got word from San Francisco from his office.

Mr. Andersen: My same objection runs to all this, I assume, your Honor?

The Court: Yes.

A. He said the situation was still unchanged and Local 505 [572] in Prince Rupert could still not handle the lumber.

(Testimony of Theodore Norton Youngs.)

Q. Was that all the conversation at that time?

A. I believe it was.

Q. When you called the second time, from Prince Rupert, did you look up the telephone number in the——

A. In the Vancouver directory.

Q. How was it listed?

Mr. Andersen: I object to that as hearsay.

The Court: Objection overruled.

A. Regional Office of the I.L.W.U. in Vancouver.

Q. Is it I.L.W.U. or is it spelled out?

A. Spelled out.

Q. How?

A. International Longshoremen's & Warehousemen's Union.

Mr. Strayer: The plaintiff offers to show that a copy of the Vancouver telephone directory is not available in Juneau, in case counsel wants to object as not being the best evidence. You may cross-examine.

Cross-Examination

By Mr. Andersen:

Q. All these places you have mentioned except Juneau are in Canada, aren't they?

A. They are.

Q. When did you first meet Mr. Boochever?

A. September 30, 1948.

Q. Is that the first time you met him?

A. It was.

(Testimony of Theodore Norton Youngs.)

Q. Do you know if he came particularly to see you?

A. I don't believe so; no. I understand he came down to see if he could get the lumber moving through Prince Rupert.

Q. Where did you meet him?

A. I was invited in the Secretary of the Chamber of Commerce's office to meet him.

Q. Did you spend one day or more than one day with him?

A. Just part of one day, I believe.

Q. You introduced him to how many people?

A. I believe I probably introduced him to four or five.

Q. You have mentioned about three here you introduced him to. Who else did you introduce him to?

A. I introduced him to a lawyer, Mr. Harvey.

Q. Who is Mr. Harvey?

A. An attorney in Prince Rupert.

Q. Who does he represent, if you know—anybody concerned in this case?

A. Not that I know of.

Q. To whom else did you introduce him?

A. I couldn't say for sure. I do know I met a couple friends of mine; Mr. Boochever being with me, I introduced him. [574]

Q. You introduced him to Mr. Berry?

A. No. I didn't know Mr. Berry before the meeting.

(Testimony of Theodore Norton Youngs.)

Q. Did you introduce him to the Secretary and President of this Local? A. I did.

Q. And to anybody else you think was connected with the Union? A. No.

Q. When you introduced him to Mr. Rothwell, what did you say?

A. I introduced him as Mr. Boochever, an attorney from Juneau representing the Juneau Spruce Corporation.

Q. And the same with respect to the other gentlemen of the Local there? A. Yes.

Q. And how long did they talk, if you know?

A. I imagine five or ten minutes.

Q. Was all this at this Chamber of Commerce luncheon?

A. It wasn't a luncheon; it was a previous meeting and was in the man's office.

Q. Whose office?

A. The Secretary of the Chamber of Commerce.

Q. Is that where you introduced Mr. Boochever to Mr. Rothwell and to the other gentlemen, the Secretary of the Union?

A. No; on the street in Prince Rupert. [575]

Q. They happened to be walking along the street?

A. In the case of Mr. Pilfold, yes. In the case of Mr. Rothwell, we had gone to the dock to see Mr. Rothwell.

Q. You took Mr. Boochever there yourself?

A. Yes.

(Testimony of Theodore Norton Youngs.)

Q. Did you make it a point to take him down there?

A. He wanted to meet Mr. Rothwell; yes.

Q. When he met Mr. Rothwell, are you certain you told him he was an attorney from Juneau?

A. Definitely.

Q. Do you know if Mr. Boochever gave him a card?

A. I don't believe so. I am not sure of that.

Q. Did Mr. Boochever participate in the conversation?

A. The conversation was between Mr. Boochever and these gentlemen; not myself.

Q. And you just stayed there? A. I did.

Q. At that time did you have the letters which have been introduced in evidence?

A. Yes; I had them in my file.

Q. You didn't have them with you, I mean?

A. No.

Q. Then, in the presence of Mr. Boochever, you didn't show them to any men from the Union?

A. No. [576]

Q. As I understand the substance of this conversation, that you heard, rather between Mr. Boochever and the two officials, as you say, of the Local there in Prince Rupert, was that there was a strike up here in Juneau, and the longshoremen there at Prince Rupert wouldn't handle the lumber on that scow; is that the gist of it?

A. Yes.

Q. Did I also understand you to say somebody

(Testimony of Theodore Norton Youngs.)

told you a Mr. Guy had come down and talked to the longshoremen and said in effect that the longshoremen up here were being cheated by the Juneau Spruce Company out of work they had always had and they had a picket line in front of the place?

A. These gentlemen told Mr. Boochever that in my presence.

Q. On either one or two occasions they told Mr. Boochever in your presence that in effect they were locked out by the Juneau Spruce Company because they were being cheated out of work they had always had from the Juneau Spruce Company as well as its predecessor the Juneau Lumber Company; is that correct?

Mr. Strayer: I object. That is not a correct statement of what the witness' testimony was, your Honor.

Mr. Andersen: Counsel knows this is cross-examination.

Mr. Strayer: I realize that very well, but it doesn't justify counsel in misquoting the testimony, your Honor. [577]

Mr. Andersen: I am not misquoting.

The Court: It might be that he misquoted it, but perhaps unintentionally. The witness undoubtedly can take care of himself. Objection overruled.

Q. Do you want me to repeat the question?

A. One part I don't remember saying is that they had the work from the Juneau Spruce. As I remember, they had the work from the Juneau Lumber Company, I believe.

(Testimony of Theodore Norton Youngs.)

Q. He was quoted as having said they always had the work from the Juneau Lumber Company and the Juneau Spruce was trying to cheat them out of it; is that part of it?

A. I don't know that I said "trying to cheat them out." They said it was work they were entitled to.

Q. I thought you used the word "cheat."

A. I may have.

Q. I may have been mistaken. Let's start again. One of these men down there told Mr. Boochever in your presence that Mr. Guy talked to some of the longshoremen and told them they had always done this longshore work for the Juneau Lumber Company; is that correct? A. Yes.

Q. And that they claimed the work was their work; is that correct? A. Yes.

Q. And that they felt the Juneau Spruce Company was cheating [578] them out of work they should have?

A. In effect cheating them—or depriving; I don't know what word—of the work.

Q. Cheating or depriving—I happened to write the word "cheating" down. That completed your statement, didn't it? A. I believe so.

Q. In other words, that was what was substantially said on the two occasions where Guy was quoted; is that correct? Or was Guy only quoted—— A. Both of them quoted Guy.

Q. Both of them quoted Guy. On both occasions

(Testimony of Theodore Norton Youngs.)

what I have just said was substantially what Guy was having been quoted as saying——

A. Substantially so.

Q. In Prince Rupert?

A. In Prince Rupert; yes.

Mr. Andersen: I think that is all.

Mr. Strayer: That is all, Mr. Youngs.

(Witness excused.)

Mr. Banfield: If the Court please, this is an out of town witness that we would like to call out of order at this time for the purpose of showing prices

Mr. Banfield: No; what it would have been sold had been produced in 1948, and the witness is out of turn, of course, because we haven't laid a proper foundation here for the production of these amounts of lumber in these cases, but it is purely for the convenience of the witness.

The Court: You mean the market price rather than what it was sold at?

Mr. Banfield: No; what it would have been sold at if it was produced and not the market price will be discussed here by a man under contract to buy them.

The Court: Is that a copy of an exhibit marked for identification?

Mr. Banfield: No, your Honor. This is entirely new.

The Court: You may proceed.

Mr. Banfield: I would like to mark this.

MELVIN W. PRAWITZ

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. I would like the witness to state his name.

A. Melvin W. Prawitz.

Q. Where do you reside?

A. Portland, Oregon.

Mr. Banfield: I would like to have this marked for identification.

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit No. 13 for identification.

Q. Mr. Prawitz, what is your occupation? [580]

A. Lumber salesman and buyer.

Q. And for whom do you work?

A. Dant & Russell, Incorporated.

Q. And where is the main office of Dant & Russell, Incorporated?

A. 711 Equitable Building, Portland, Oregon.

Q. Is that the office in which you work?

A. Yes.

Q. Mr. Prawitz, we wish to identify Dant & Russell here for reasons which will be obvious in a short time. Will you tell us what kind of an organization it is, and what it does, and how extensive its operations are?

Mr. Andersen: Did you say "expensive" or "extensive"?

Mr. Banfield: "Extensive."

(Testimony of Melvin W. Prawitz.)

A. It is a lumber brokerage firm also acting as sales agent for several mills. They also handle firtex, doors and plywood.

Q. And in what area do you buy lumber?

A. We buy lumber from northern California, Oregon, Washington and Alaska.

Q. And do you—where do you sell this lumber?

A. Anywhere in the United States, also for export.

Q. Where do you maintain offices—for the distribution of this lumber—do you have any branch offices?

A. Yes, there are sales agencies in San Francisco, Los [581] Angeles; Columbus, Ohio; Newark, New Jersey; Philadelphia, Pennsylvania; Boston, Massachusetts; Rensselaer, New York, and Albany, New York, also——

Q. Permit me to stop you there, Mr. Prawitz. Are those sales agencies of Dant & Russell, Incorporated, directly under their control or management?

A. Yes, they are under their control.

Q. Do you have any other method of disposing of lumber except through these particular sales agencies and offices?

A. Yes; we have commission salesmen. Some are exclusive for Dant & Russell and others are used by other mills and brokerage firms.

Q. Where do you find those, generally speaking?

A. They would be throughout the United States.

(Testimony of Melvin W. Prawitz.)

Well, they might possibly miss a few states, but we have them pretty well represented throughout the United States.

Q. Do you have any connection in foreign countries? A. Yes.

Q. What do you have abroad?

A. They are also actually commission agents. We have them in London, also we work with some in Europe, Australia and the Hawaiian Islands.

Q. How much lumber does Dant & Russell dispose of in any period of time which you can name?

A. I would say the average rail shipments are approximately [582] one hundred, or I mean one thousand cars per month, and then there is also Atlantic Coast water shipments and export shipments—that would total approximately the same as the rail shipments that would be.

Q. Is there any agreement between Juneau Spruce Corporation and Dant & Russell, Incorporated?

A. A verbal agreement that we act as their sales agent.

Q. Is that customary for you to act on a verbal agreement? A. Yes.

Q. And would you tell us how this agreement operates?

A. We have been handling their sales——

Mr. Andersen: I didn't hear that.

A. We have been, and do, handle their sales outside of Alaska; in other words, anything going to the States or anywhere we see fit to sell it.

(Testimony of Melvin W. Prawitz.)

Q. Are you the exclusive agent for outside sales?

A. Yes.

Q. Pardon me for interrupting—how does it operate? Just go ahead, explain the methods, what you do in buying and selling this lumber.

A. Actually, we operate in one of two ways. We offer stocks for sale the same as for other people. When we receive an order it is subject to our confirmation and we give the mill a chance to confirm the order, and then it becomes a formal order, and then we act or sell on a [583] commission basis.

Q. That is one method? A. Yes.

Q. Do I understand you to say that you wait for some agency of Dant & Russell, Incorporated, or some commission agent to get an order from some customer—we will say in Albany—and he transmits the order to your office, and you transmit it to where, to do business with the Juneau Spruce? Where do you have to send that order? Do you do it in Portland or Coos Bay or where?

A. We write an order in Portland and send it to Juneau.

Q. And that shows the prices? A. Yes.

Q. And quantity? A. Yes.

Q. Grades? A. Yes.

Q. When an order gets to Juneau what is done?

A. They ship on that order.

Q. Do they ship before they agree with you to sell the lumber?

(Testimony of Melvin W. Prawitz.)

A. Not on that particular car. We have——

Q. I mean on this particular type of a sales deal now.

A. No; they wouldn't ship until they received the order.

Q. Would they confirm the order before shipping? In other [584] words, do they have an opportunity to refuse that offer? A. Yes.

Q. Then their acceptance or rejection is transmitted to you, is that right? A. Right.

Q. And you have to go on back to the customer?

A. Yes; or place it elsewhere.

Q. What other type of arrangement do you have with Juneau Spruce, if any?

A. We, in some cases, we have waited for an inventory and sold the stock in transit.

Q. Mr. Prawitz, your terms in the trade are not quiet intelligible to us, such as you say "wait for inventory." We don't know what that means.

A. If they have accumulated stock and do not have orders for that stock and decide they want to ship it, we tell them to go ahead and ship and they send a tally, or list of grades and footages, and we sell from that list while the stock is in transit to the States, or wherever it might be going.

Q. In that event, if the sale is on the second plan, do you always tell them at what prices you can sell before you can sell?

A. Yes; we give them a chance to turn down the offer or order the same as on any other business. [585]

(Testimony of Melvin W. Prawitz.)

Q. If the Juneau Spruce Corporation were to have offered Dant & Russell for sale during the year 1948 fifty million feet of lumber of the kind which is produced in Southeastern Alaska and in the grades which are produced here, would you have been able to dispose of that lumber?

A. Yes.

Mr. Andersen: To which I will object and move it be striken, a sufficient foundation not having been laid.

Mr. Banfield: We shall ask the witness how he knows.

The Court: You can ask him as to the state of the market from which that could be inferred. The objection is overruled in the meantime.

Q. Did you answer the question? A. Yes.

Q. What was your answer?

A. Yes; it was yes.

Q. Would fifty million feet of lumber be a very large percentage in your total business?

A. No. It would be approximately—oh, I should say, eight or ten per cent.

Q. Now, what was the state of the lumber market in 1948, as compared to, we will say, 1947?

A. The lumber market in 1948 prior to, I think, September—some of the grades started falling off a little—but the market prior to that time was at its peak. In comparison [586] with 1947, I would say after July, 1947, until September or October, 1948, was a peak market. In other words, the stock——

(Testimony of Melvin W. Prawitz.)

Q. What do you mean, "peak market"? Do you mean demand?

A. Demand and price.

Q. Demand and price? A. Yes.

Q. In other words, how readily would this lumber have moved on the market up to September, 1948?

A. Well, very readily. In other words——

Mr. Andersen: Same objection to all of this, may it please the Court—not sufficient foundation having been shown.

The Court: Objection overruled.

Q. Was it a sellers' market or a buyers' market?

Mr. Andersen: The same objection, may it please the Court.

The Court: Objection overruled.

A. A sellers' market.

Q. By that, what do you mean?

A. In other words, we as lumber salesmen, were able to get our price for the material and it wasn't too hard to find the people interested in buying the lumber.

Q. What happened in the market after September of 1948?

A. Well, the lower grades of lumber in September showed a [587] slight decline. In October it showed a much greater decline.

Q. Let me stop you there. How about in the medium and higher grades of lumber?

A. Not so much—I think possibly November was the larger—so in the upper grades, and then it more or less leveled off from that time on.

(Testimony of Melvin W. Prawitz.)

Q. And continued at that level until what time?

A. It is still about the same.

Q. Mr. Prawitz, how long have you been with Dant & Russell?

A. July 28, 1946, is when I started with them.

Q. And have you been in this same position all the time?

A. No; I don't know just how you mean that.

Q. Since you began with Dant & Russell, do you occupy the same position?

A. No. I was buying and selling, but different types.

Q. What types have you bought and sold?

A. I started in what we call small mill production, which was rough lumber, and then yard items, and then specialties, such as spruce, cedar, hemlock, etc.

Q. In other words, you are now buying and selling specialties, is that it? A. Yes.

Q. Did that include the particular type of lumber produced in Southeastern Alaska? [588]

A. Yes. In other words, the policy set down is that they do handle spruce.

Q. Before you went with Dant & Russell, Incorporated, would you tell us briefly your experience in the lumber industry?

A. How far back.

Q. Say, when you quit school and briefly outline it—I don't want to take very long.

A. I actually started in lumber in about 1932,

(Testimony of Melvin W. Prawitz.)

in Anacortes, Washington. I worked in mills, and then about 1940 I went to work for McDonald & Gattie Company, who were spruce lumber brokers, and I inspected for them, and did some buying, and later on I ran a remanufacturing plant for them, after which I worked for probably—I think it was 1943 I went to work for the Spruce Lumber & Veneer Company at Vancouver, also a spruce operation, and this was mainly in spruce, aircraft and clears, and the aircraft program faded, after which I went to work for the Pacific Lumber Inspection Bureau, from then—that was probably, I think it was 1945 and '46, until I went to work for Dant & Russell.

Q. Mr. Prawitz, what is the Pacific Lumber Inspection Bureau, which will come into the case later?

A. Well, it is an independent inspection service, in other words. I don't know just how to explain it. They are [589] the official graders for mainly export lumber, although they do also grade for domestic shipments.

Q. The mill operator will hire a P.L.I.B. man to certify his lumber as to grade?

A. That is right.

Q. Does that certificate mean anything in the trade? A. Yes.

Q. What does it mean?

A. The grading is final and you could call for re-inspection.

(Testimony of Melvin W. Prawitz.)

Q. By whom? A. A supervisor.

Q. Of whom? A. P.L.I.B.

Q. Are there inspections?

A. Once in a while there might be a question.

Q. By supervisors in the same organization?

A. The same organization or West Coast Bureau of Grades.

Q. Mr. Prawitz, are you familiar with the prices at which the various types, grades, sizes, qualities of lumber produced in Southeastern Alaska could have been sold? Do you know what the market prices were for lumber during each month?

Mr. Andersen: That assumes facts not in evidence. No foundation has been laid.

Mr. Banfield: I am asking if he knows. [590]

Mr. Andersen: That is getting into that objection again, if somebody is asking and somebody would answer "I know how," or I mean say "Yes." I don't know where he would get the information. It is the same idea.

The Court: It might be a guess in the case you cite, but it appears here that it would be a little more than a guess.

Q. Now, would you, Mr. Prawitz, know the prices at which the various grades, etc., could be sold? A. Yes.

Q. That is in response to my full question that I asked a moment ago? A. Yes.

Q. Did you prepare this schedule marked Plaintiff's Exhibit No. 13 for identification which I now show you? A. Yes.

(Testimony of Melvin W. Prawitz.)

Q. And where did you prepare that?

A. In the Portland office.

Q. Of Dant & Russell, Incorporated?

A. Yes.

Q. And you had access to all your records at that time? A. Yes.

Q. You have access to all records of Dant & Russell, Incorporated? A. Yes. [591]

Q. And this is prepared from your own knowledge and transactions that took place?

A. Yes.

Q. Now, Mr. Prawitz, if fifty million feet of lumber had been offered to you in 1948 and 1949, that is, from April, 1948, to the end of March, 1949, could you have disposed of it and sold it for the prices stated for the various grades, qualities, sizes and in the months set forth in this schedule as shown on this Exhibit 13 for identification?

Mr. Andersen: I object. It is purely speculative and an insufficient foundation has been laid, and it is incompetent, irrelevant and immaterial, may it please the Court.

The Court: You might ask him as to what he sold during that period, during that year—whether he sold that kind of lumber.

Q. Mr. Prawitz, did you sell the kind of lumber shown on this exhibit during 1948? A. Yes.

Q. Did you sell any quantity?

A. We didn't sell the quantity, we sold it in other species. The quantity of spruce wasn't available, due to the market being a sellers' market.

(Testimony of Melvin W. Prewitz.)

Q. In other words, you mean to say you didn't have enough of it to sell? [592]

A. That is right.

Q. But you did sell some? A. Yes.

Q. Spruce? A. Yes.

Q. Hemlock? A. Yes.

Q. Cedar? A. Yes.

Q. Do you know what the prices and the demand—do you know what the demand was and what the price was that the public would pay for these goods?

A. Yes.

Q. During all these months? A. Yes.

Q. And for all these grades, and sizes?

A. Yes, that is right.

Q. Do you know of your own knowledge whether you could have sold fifty million feet of lumber from Southeastern Alaska? A. Yes.

Q. Grown and produced here, at the prices shown on this sheet? A. Yes.

Mr. Andersen: The same objection, may it please the Court. [593]

The Court: The same ruling.

Q. Could you have, or could you not?

A. We could.

Mr. Andersen: The same objection.

The Court: The same ruling.

Mr. Banfield: So I will make sure of the last question, I will put it in a different form.

The Court: I thought you followed it up. That objection was overruled after that.

(Testimony of Melvin W. Prawitz.)

Mr. Banfield: Will you read the last question and the last answer please?

Court Reporter: "Could you have, or could you not?". A. "We could."

Q. Now, Mr. Prawitz, how definite are these prices, how certain are you that you could have sold these quantities at these prices?

Mr. Andersen: I object to that as calling for the conclusion and opinion of the witness and a sufficient foundation not having been laid.

The Court: It might be if it was future, but not for past. Objection overruled.

A. Those prices are conservative. We are certain we could have sold the lumber at those prices shown on that schedule.

Mr. Banfield: That is all. You may cross-examine. [594]

Cross-Examination

By Mr. Andersen:

Q. Mr. Prawitz, are you being paid for your testimony here? A. Being paid?

Q. You heard the question, didn't you? Didn't you hear my question? A. Yes, sir.

Q. I asked you if you were being paid for your testimony here. Can't you answer that simply and shortly? Do you have to hesitate to answer the question?

Mr. Strayer: If the Court please——

Q. Don't look at counsel. Look at me.

Mr. Strayer: I object to counsel's tactics.

(Testimony of Melvin W. Prawitz.)

Mr. Andersen: I want the record to show I asked a simple little question.

The Court: You asked if he is being paid for his testimony. That is rather ambiguous. The fact that the witness hesitated would hardly justify any intemperate attitude toward him. You may answer the question.

A. I don't understand the question.

Q. Have you received any money for coming here? A. No.

Q. Have you received any money for compiling this data?

A. My regular salary—it is part of my work. It would be Dant & Russell income. [595]

Q. Have you come up here to testify without a fee of any kind? A. Without what?

Q. Without a fee of any kind?

A. My normal salary.

Q. Do you have any understanding with the Juneau Spruce Corporation that you will be compensated for your work here?

A. No, I haven't.

Q. Do you know if anybody else made arrangements to have you compensated for coming up here?

A. How that will be handled, I don't know.

Q. When I asked you first if you were being paid for coming up here, you said "What," didn't you? A. I didn't understand your question.

Q. Is that the only thing you meant? Don't you understand what payment is? A. Certainly.

(Testimony of Melvin W. Prawitz.)

Q. If a person asks you a question, "Have you been paid for something?" don't you understand what is meant by that? Don't you understand what is meant by that question?

A. That takes in a lot of territory.

Q. Don't you understand what is meant by that question, "Have you been paid for that?"—can't you understand that, sir?

A. Not the way it was put. [596]

Q. You didn't understand the way it was put when I asked the question, "Have you been paid for testifying?"—you don't understand that?

A. I do now.

Q. I had to explain all this before you understood what was meant by a simple question, "Have you been paid for testifying?"

A. That is right.

Q. And you say you drew this compilation; and you don't understand a simple question, and you drew this compilation? A. I drew that.

Q. Did you bring any records of any kind?

A. No, sir.

Q. Did you know that you were going to testify here today? A. That is right.

Q. Did you talk this testimony over with anyone before you came here? A. Well, I——

Q. Can't you answer yes or no? A. Yes.

Q. Did you talk this testimony over with anyone before today? A. Yes.

Q. With whom? A. Fellow workers.

(Testimony of Melvin W. Prawitz.)

Q. That is, of course, just fellow workers?

A. And I have naturally talked about the case since I have been here.

Q. You have to hesitate to answer those simple questions?

Mr. Strayer: Your Honor, I would like the record to show and counsel knows that attorneys generally talk to their witnesses before they testify, and I object to counsel's bullying tactics.

Mr. Andersen: I am not bullying.

Mr. Strayer: He doesn't give him time to answer and then jumps on him for not answering in a hurry.

The Court: I think the manner of questioning is hardly justified in view of the nature of the testimony asked for. It is not as if we were on a vital issue.

Mr. Andersen: You are probably right, your Honor.

Q. Have you discussed this case with anybody else? A. Yes.

Q. With whom? A. Fellow workers.

Q. Fellow workers? A. Yes.

Q. What do you mean by fellow workers?

A. The men I work with at Dant & Russell.

Q. Of course you haven't discussed it with these gentlemen here, have you? [598]

A. Yes, I have.

Q. Oh, you have also discussed it with them. You haven't brought any records with you, have you? A. No.

(Testimony of Melvin W. Prawitz.)

Q. Can you tell me how many feet of lumber that you sold, if any, for the Juneau Spruce Lumber Company from May 1, 1947, to April 30, 1948?

A. No. I don't know exactly.

Q. Do you know if you sold any?

A. Yes, sir.

Q. But you don't know exactly?

A. I don't know the exact footage; no.

Q. Did you check it?

A. We keep a record of it.

Q. Did you check it before you came up here to testify? A. No.

Q. As to how much was actually sold by you?

A. No, I didn't.

Mr. Andersen: That is all. Thank you.

Mr. Banfield: That is all, Mr. Prawitz. Thank you very much.

(Witness excused.)

(Whereupon the jury was duly admonished and the trial was adjourned until ten o'clock a.m. May 6, 1949, reconvening as per adjournment with all parties present as heretofore, and [599] eleven of the twelve jurors present in the box; whereupon the Court directed the Marshal to inquire into the absence of the juror Mrs. Hunsbedt, and thereupon the trial proceeded as follows:)

Mr. Banfield: I think we have a legal matter we can dispose of while we are waiting for the absent juror, in the absence of the jury.

The Court: The jury may retire until called.

(Whereupon the jury retired from the court-room.)

Mr. Banfield: If the Court please, counsel for defendants have indicated they would like to call Mr. Schmidt this morning as a witness for the defendants out of turn, in order to accomodate Mr. Schmidt, who will have to be gone from Juneau from now on. We have consented. In asking to call him out of turn they stated that they intend to show past practice at the Juneau Lumber Mills, and no doubt in the course of the presentation of testimony the question is going to come up as to whether or not that is admissible in evidence, and we intend to resist any presentation of evidence as to what the Juneau Lumber Mills did, unless counsel can offer to prove and make an offer of proof that they will show a contract binding upon the Juneau Spruce Corporation to employ, or to continue to employ, the members of Local 16. We are sort of anticipating the evidence here, and we realize this witness is being called out of turn, and there may be [600] some evidence that the Juneau Spruce Corporation is bound by a contract with Local 16 to hire the members of that organization or after hiring—or, and after hiring them, to continue. If such an offer is made it might be admissible, and if not, it will not be admissible. We would like to take that up. It will involve argument on a legal question.

Mr. Strayer: I would like to add that we understand the defense is built on past practice, so determining this now we may shorten the case, looking toward the time the defense starts putting on its own testimony.

The Court: Do you want to state your side?

Mr. Andersen: I believe from what counsel said, it is rather clear. The witness Mr. Schmidt is a witness who has already been here, of course. He was a manager or something of the Juneau Lumber Company and worked for plaintiff in this. It has even been raised in this case whether or not there was a written contract or contracts between the Juneau Lumber Mill and Local 16. As a matter of fact, your Honor will recall the testimony of Mr. Flint, here. He said after some sort of investigation had been made he was permitted to answer, over objections, that as a result of the investigation he determined the statements were false. We have here a contract specifically between the Juneau Lumber Mills and Local 16, may it please the Court, which we will offer in evidence at the appropriate time. The witness will also [601] testify that the same hiring practices will carry over to Juneau Spruce as had obtained under Juneau Lumber. Now, of course, a contract may rest in writing or may rest in parol and from that simple statement, may it please the Court, I think the scope of the direct examination would be as broad as that implies. In other words, we are going to show the written contract which was adopted between the parties; that is, the Juneau Spruce——

Mr. Banfield: May it please the Court, I think counsel has left out any offer of proof as to one necessary step. He might very well offer this written contract with the Juneau Lumber Mills and argue that he will offer proofs that the same practices continued as to hours, wages and conditions of employment. That would not bind the employer, Juneau Spruce Corporation, to keep these men in this employment.

The Court: When you say "these men" you mean longshoremen?

Mr. Banfield: Longshoremen. No obligation is implied to keep them in the employer's employment unless the Juneau Spruce Corporation had in some way or other obligated itself to continue the employment of longshoremen. It is just as simple as this: that if you have—if you buy out a grocery store and employees are working there, and you continue and [602] go on employing the same persons, but that does not prevent you from discharging those employees and hiring others. There is nothing in this act which prohibits you from doing that. There is nothing unlawful or illegal about it. If the Court will notice the language of the statute under which we are suing here, it is apparent Congress had no intention that you continue anyone in employment unless, of course, you have an agreement to continue them in their employment; then you are bound, but so is anyone else in any other contractual relation with an employee. This section simply states that it is unlawful for a labor

organization to engage in or to induce a strike or to perform services for the employer where the object thereof is to force or require any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft or class, rather than to employees in another labor organization or in another trade, craft or class. In other words, suppose there were longshoremen down there in the employment of the Company on April 9, we will say, and these longshoremen were performing all of the work of loading lumber on barges. Unless those longshoremen have a contract with the employer whereby they can force the employer to continue hiring them, which is then specified in the contract, the employer is free to discharge those employees and assign the work to someone else, and any time a labor organization throws up a picket [603] line to force the employer to assign work to them, instead of those to whom the employer assigned it, then the act is violated.

The Court: The purpose, as I see it, of counsel's offering the testimony—it is for the purpose of rebuting or qualifying what has already been introduced as part of your case in chief. I think that is plain from what he said a moment ago, and for that I think it is admissible.

Mr. Banfield: If the Court please, the statement of Mr. Flint was they claimed they had a contract that was binding on the Juneau Spruce Corporation. Now, counsel has offered to show there is

such a contract with the Juneau Lumber Mill, and that the practice carried over, but he has not offered to show that the contract was binding upon the Juneau Spruce Corporation for any period of time whatsoever. Mr. Flint's testimony can only be rebutted by showing it is binding on the Juneau Spruce Corporation. Mr. Flint doesn't deny they had a contract with the Juneau Lumber Mill, but what he found as the result of his investigation was that it was not binding on the Juneau Spruce Corporation.

The Court: But that isn't all the testimony, as I recall it, when you consider it is not merely the testimony of Mr. Flint but all your testimony on that point. It would certainly tend to show that there was no work of this kind done by the longshoremen before that time. [604]

Mr. Banfield: No, that isn't true, your Honor. Before what time?

The Court: Before the change of ownership.

Mr. Banfield: I think there has been—I think just a lack of testimony that the longshoremen had been employed under the Juneau Lumber Mill. That has not been offered, and counsel would have a perfect right to offer it if he could show that there was an agreement on the part of the Juneau Spruce Corporation to——

The Court: I don't see how his offer or his statement could be construed as implying that he wants to put it in for that purpose. Now, I don't pretend to recall all the testimony that has gone in as to

who did this work before the change of ownership or to what extent, but the impression I have from the evidence submitted on behalf of the plaintiff is that there is testimony to the effect that work of this kind had not been done by the longshoremen before. Now, if I am in error on that, why of course there would be no ground upon which this particular testimony could be received.

Mr. Strayer: I think your Honor is in error in that regard. As I recall the testimony, there were two things; first of all, in the way of representations made by the longshoremen to the I.W.A.—two representations, one was that the longshoremen had a contract with the Juneau Spruce Corporation, which, it was testified, they found was false, [605] and Mr. Banfield has pointed out that no evidence is admissible to rebut that unless, in fact, they showed that there was a contract with the Juneau Spruce. The second thing, this particular work of loading barges, was longshoremen's work done by the longshoremen everywhere up and down the Pacific Coast, which Mr. Flint discovered since was false. I think the latter point is what your Honor is thinking about, the precise thing for counsel to rebut. If he could show that all longshore work up and down the Pacific was done by longshoremen; that is, all barge loading was done by longshoremen, but to show that the Juneau Lumber Mill had employed longshoremen for loading barges wouldn't show the general practice as represented by the longshoremen. This same problem

was before the National Labor Relations Board in proceedings before that Board. I assume the evidence they intend to offer here was that offered before the Board, and found by the Board not to be a contract with the Juneau Spruce Corporation. They didn't have the question of rebutting testimony, but I submit there is no testimony which could be rebutted in work done for the Juneau Lumber Mill.

Mr. Banfield: I have to disagree with my co-counsel. Mr. Flint did testify, as I remember, in addition to the charge that the contract carried over, he said they also represented to him they had the same practice up and down the Coast. Then he said also that the longshoremen told them there [606] was a past practice of the longshoremen loading barges, and that he investigated that and found that to be untrue. Now, it is true that there was a past practice even with the Juneau Spruce Corporation of loading a certain type of barge with certain type of products. Now, for the purpose of showing that that was false as the past practice, I want to go back to the past practice of the Juneau Lumber Mills. The testimony which they are now offering would rebut to some extent, in fact would rebut the testimony of Mr. Flint, because the Juneau Lumber Mills did use longshoremen for many purposes at the plant. The most force of the testimony was that there was no past practice of loading Company-owned barges with lumber, as they were carrying it on in October of

1947 or in April of 1948, and I think Mr. Flint is entirely correct in that, so that we want to point out to the Court that Mr. Flint did testify to that extent, and this might be used if they could show means of past practice, or what he meant. He meant, I think, by the testimony, that the Juneau Spruce Corporation had not employed longshoremen to load its own lumber on its own barges for shipment to its own customers. They are now attempting to show that Mr. Rutherford did it. What Mr. Rutherford did would in no way be material to this cause. Now, it is only material to show Mr. Flint was not entirely accurate, unless it is specified that there was past practice with all persons of that plant, that had ever owned it. That is [607] the distinction. If it is offered for that purpose, past practice, I think would be admissible on the theory that Mr. Flint testified on all past practice, and that would be material. I don't think the past practices of the Juneau Lumber Mill are material as to whether or not the plaintiff has a cause of action in this case. It doesn't follow that practice under the Juneau Lumber Mills is in any way binding on or requiring the Juneau Spruce Corporation to continue these men in employment. We would be willing to stipulate in the regard that regardless of what Mr. Rutherford did, that he was only testifying to the past practice of the Juneau Spruce Corporation.

The Court: Who?

Mr. Banfield: Mr. Flint was testifying as to

what the past practices were at the Juneau Spruce Corporation. That is the only past practice relevant in this case.

Mr. Andersen: Does your Honor want to hear anything further?

The Court: On the admissibility of this, if you have anything further to say than you have already said——

Mr. Andersen: It seems to me so crystal clear—we are asserting the contract here between the Juneau Spruce and Local 16—we are asserting the contract.

The Court: By the Juneau Spruce?

Mr. Andersen: Yes, and this is going to prove it. [608]

The Court: Then it is not merely a case of qualifying somebody else's testimony, but you claim it is admissible as part of your defense.

Mr. Andersen: Yes, your Honor, and also that it will impeach Mr. Flint because Mr. Flint said, if I can try to paraphrase his evidence, he said "They came and told us that they had had a contract"; that is, Local 16. Remember Mr. Flint talked about a Coast-wise contract signed on behalf of all by the International? He testified something like that so then he said "They came to us and told us they"—meaning Local 16—"had a contract with the Juneau Lumber which in their opinion carried on over when the Juneau Spruce took over." That is practically his verbatim testimony. On direct examination he further testified "We in-

vestigated that and found out that statement was false, that Local 16 never had a contract with Juneau Lumber." That is verbatim testimony, your Honor. It goes in for two purposes: to impeach Mr. Flint and to show a contract between Juneau Spruce and Local 16. That is what we will offer the evidence for.

The Court: You mean this contract to which you refer between the Local and the Juneau Lumber Mill, you contend is binding on the Juneau Spruce Corporation?

Mr. Andersen: Yes, I will.

The Court: By its terms or otherwise?

Mr. Andersen: By adoption, your Honor. [609]

The Court: Wouldn't you have to show first——

Mr. Andersen: At this point I might respectfully state, your Honor, this is an unusual procedure. Usually it is customary for counsel to ask witnesses questions and then have appropriate objections made at the time. This is consuming unnecessary time of the Court.

The Court: It is not an ordinary incident. Here the attempt is made to put testimony in out of order and further, from what you say, that this testimony would be without foundation in this respect, that there would be no foundation that the contract carried over except presumably that which would come from some other witness, but the witness' testimony goes in out of order and it would be improper to receive it. If it is shown by some other person that the contract carried over——

Mr. Andersen: That is our position. Calling out of order testimony taken on nunc pro tunc basis, Mr. Schmidt leaving town, and it is a courtesy to the witness. It only goes into the record when we put in our case in chief.

The Court: It would appear from what has been said here that the contract or evidence of it would be admissible to contradict Mr. Flint. Now then, so far as its admissiblity for any other purpose, such as to show that it was binding upon the Juneau Spruce Corporation, that would depend on the other proof. Subject to that condition it may [610] be received. Call the jury.

Mr. Strayer: May the record show that the evidence is coming in subject to our objection, unless it is so connected up except for the limited purpose of impeachment?

The Court: I think the record shows that.

Mr. Banfield: That is our position.

(Whereupon all twelve jurors took their places in the jury box.

Mr. Andersen: Shall we proceed, your Honor?

The Court: Yes. I think it should be stated to the jury what the purpose of the testimony is otherwise they might——

Mr. Andersen: Testimony, once it goes in, is for all purposes.

The Court: If you don't insist on it——

Mr. Andersen: No.

The Court: Very well.

GEORGE B. SCHMIDT

called as a witness on behalf of the defendant, having previously been duly sworn, testified as follows:

Direct Examination

By Mr. Andersen:

Q. Mr. Schmidt, you have testified heretofore in this case and have been sworn and testified that you were an official of the Juneau Lumber Company and that you were also an official of the Juneau Spruce Company, up until, I [611] think, January of 1948; is that correct? A. Yes, sir.

Q. Now, while you were with the Juneau Lumber Company, I think you said you were Manager?

A. Vice President and Assistant Manager.

Q. And from 1941 did you have a contract——

Mr. Andersen: Will you mark this for identification please?

The Court: You intend to introduce it with this witness?

Mr. Andersen: Yes, sir.

The Court: I don't think it is necessary to mark it for identification then. Just fix the time.

Mr. Andersen: Very well.

Q. I show you a contract bearing the date June 4, 1941. Have you seen that before, sir?

A. Yes, I have.

Q. Is that a contract between Local 16 here in Juneau and the Juneau Lumber Mills?

A. This one doesn't have the Juneau Lumber Mill name on it, but we had a contract signed for us by the Northland Transportation Company.

(Testimony of George B. Schmidt.)

Q. The same contract?

A. Yes, and they were our agents.

Q. And this contract, dated June 4, 1941, was in effect on [612] April 30 of 1947, is that correct?

A. There was an amendment sometime in 1946, I believe, and the Northland Transportation Company also represented us on that.

Q. So far as still being a contract with Local 16, the same contract still continued in effect; is that true? A. That is right.

Q. So up until April 30, 1947, the contract between the longshoremen and the Juneau Lumber Mills—the longshoremen working here were governed by this contract; is that correct?

A. That is correct.

Mr. Andersen: We offer it in evidence.

Mr. Strayer: May we have a look at the whole thing?

Q. Juneau Lumber sold out to Juneau Spruce on April 30 or May 1 and after that date did you represent Juneau Spruce at that time, I believe, as Assistant Manager? A. That is right.

Q. And you carried on the hiring of the longshoremen in the same way you carried it on under Juneau Lumber? A. Yes, I did.

Q. Now, with respect to the I.W.A. contract, that is, the contract with the Wookworkers there, you of course had a contract with the I.W.A.; that is, Juneau Lumber had a contract with I.W.A.—

(Testimony of George B. Schmidt.)

the same general type of collective [613] bargaining agreement? A. Yes.

Q. Again, Juneau Lumber sold out to Juneau Spruce on or about April 30, 1947? A. Yes.

Q. During the interim between May 1, 1947, and November 3, 1947, the date that another contract was entered into between Juneau Spruce and the I.W.A., did Juneau Spruce carry on under that same contract also?

Mr. Strayer: I object to that as calling for his conclusion.

The Court: Objection overruled.

A. They called in the officers of the Union, the mill called them in on the day the Juneau Spruce took over, and told them they were going to operate along the same basis as they had with the Juneau Lumber Mills, but at any time that the Local, the sawmill workers' Local, wanted to get a contract, to just come up and they would negotiate one.

Q. So in that period grievances were settled under the old contract, and wages were paid under the old contract? A. That is right.

Q. Now, I believe that is——

Clerk of Court: Defendant's Exhibit——

Mr. Andersen: I think it is "C." Leave it blank until I check. I would like to read a portion of the record. [614]

Mr. Strayer: Is that the contract? Has that been admitted?

The Court: As I understood it, after it had a

(Testimony of George B. Schmidt.)

number or letter on it, you were going to show it to counsel?

Mr. Andersen: That is right.

(The document was passed to counsel for plaintiff.)

Mr. Strayer: This appeared to have been terminated September 31.

Mr. Andersen: It has an annual renewal clause.

Mr. Strayer: That is what I am trying to find.

Mr. Andersen: It is in there somepiace. Counsel informs me that—Mr. Paul—this is the contract they operated on all during the period. I will offer it in evidence as Defendant's Exhibit C, your Honor.

Mr. Strayer: May the record show an objection, a general objection to this material. I understand it is being admitted subject to being connected up?

The Court: It will be admitted subject to being connected up in the manner indicated some minutes ago.

(Whereupon the document was marked Defendant's Exhibit C.)

Q. There are three signatures on Exhibit C in the righthand corner. Do you recognize the signatures?

A. I don't recognize the signatures. I know the men.

Q. Who were those three men? [615]

A. Sam Elstead is a longshoreman, and Mr. Ernest Buck, and so is Davis.

(Testimony of George B. Schmidt.)

Q. They were, to your knowledge, members of Local 16? A. That is right.

Mr. Andersen: I would like to read a portion of this, may it please the Court.

The Court: You may do so.

Mr. Andersen: "Section 1, that part reading 'transfer from vessel to first place of rest,' be amended to read 'transfer from and including vessel's sling to first place of rest.' It is recognized by I.L.W.U. No. 16, and agreed, that the three steamship companies, namely Alaska Steamship Company, Northland Transportation Company and Alaska Transportation Company, have an agreement with the Sailors' Union of the Pacific which gives members of that organization preference in the loading and discharging of cargo." That is the only portion I wish to read.

Q. Now, as an official of the Juneau Spruce Corporation, you were the auditor also, were you not?

A. I acted in that capacity to start with. Toward the end my duties were others, so——

Q. Were you familiar with the financial assets of the corporation? A. Yes.

Q. And you were familiar with the financial assets of the [616] corporation from May 1, 1947, to and including what day?

A. About January 19, 1948.

Q. And that is a period of eight months and a half? A. Yes.

(Testimony of George B. Schmidt.)

Q. During that period of time, Mr. Schmidt, and at the Juneau mill here in Juneau, what if anything were the net profits of the Company?

A. The profits of the entire organization up to the balance sheet, as I recall it, and my figures might be a little bit hazy, about $130,000.

Q. What were the profits of the corporation at the Juneau mill in Juneau, Alaska?

A. Somewhere around $60,000.

Q. During that eight-month and a half period?

A. Yes.

Mr. Andersen: That is all. You may examine the witness.

Cross-Examination

By Mr. Banfield:

Q. Now, Mr. Schmidt, testifying as to the practice of the Juneau Spruce Corporation in hiring longshoremen, you testified you hired them in the same way as for the Juneau Lumber Mill, Inc.?

A. That is right. [617]

Q. What did you mean by that?

A. The work that we had for them to do at that time was work loading these boats that came in; you know, fishing boats or scows that came in. For someone else's scows we hired longshoremen for the benefit of the purchaser of the lumber.

Q. You said in the same way?

A. I called them up and had them come down.

Q. Was there ever any discussion as to how

(Testimony of George B. Schmidt.)

much they would be paid, what hours worked, conditions of employment?

A. We paid the going wage, which was in effect at the time. The fact of the matter is, we were presented with a bill by the longshoremen's boss and we accepted that.

Q. You hired them from time to time under the current conditions that they worked in Juneau?

A. That is right.

Q. Was the Juneau Spruce Corporation in any way obligated to hire them?

Mr. Andersen: I will object.

Mr. Banfield: May it please the Court, this is cross-examination. This is a defense witness put on as his own witness. I have a right to cross-examine to show exactly how they were hired, whether there is any better evidence of hiring, any contract, any obligation to hire, or if they were hired from time to time and let go, or whether they were steady [618] employees. I have a right to show all the conditions of this employment, after he brought out that it was the same way.

Mr. Andersen: I will waive.

A. The question again, please?

Q. Was the Juneau Spruce Corporation obligated to hire these people for this particular work? Did they have to hire them?

A. We were requested in most cases to get longshoremen by the people whom we hired longshoremen for.

Mr. Andersen: I ask that be stricken as not

(Testimony of George B. Schmidt.)

responsive to the question, may it please the Court.

Mr. Banfield: I will follow that up, your Honor.

Q. In other words, you mean you were obligated in so far as other people, customers, requested you to hire them for their account?

A. Yes, because they were paying for it.

Q. Did Juneau Spruce Corporation have any contract with these longshoremen? A. No.

Mr. Andersen: I am going to ask that that last answer be stricken as calling for a conclusion and opinion of the witness, may it please the Court. I think we have already established through this witness that the same kind of practice continued under the Juneau Spruce that obtained [619] under the Juneau Lumber. Now, I move the answer be stricken on that basis.

Mr. Banfield: If the Court please, I wrote down his specific answer. His answer was "Yes, I did." He was asked if he hired longshoremen in the same way, which is leading. I took no objection. I wanted to make sure it stood that way; what it means. The same way means same manner.

Mr. Andersen: I will waive the objection. Go right ahead, counsel.

The Court: Proceed.

Q. Was this intermittent or steady work?

A. Intermittent.

Q. How often did they work?

A. I couldn't answer that exactly, except whenever boats come in for lumber of that kind then we hired some longshoremen. Probably ten or twelve

(Testimony of George B. Schmidt.)

cases, something of that sort, during the period that I was there.

Q. How many hours would they work each time?

A. That depends entirely on the volume of work to do.

Q. What would be the minimum?

A. About two hours, I guess, something like that.

Q. What would be the maximum?

A. It might be a day; it might be two days.

Q. Would it ever be a week?

A. Rarely. I don't recall any time it was a week. [620]

Q. Do you recall any time that longshoremen worked more than two days at a time?

A. Not off hand. That could be, but I don't recall it.

Q. Now, when the Juneau Spruce Corporation took over, Mr. Schmidt, you say it called in the members of the I.W.A. Local, or its officials, and told them that you would operate in the same way that the operation had been conducted in the past. Was there any agreement as to how long this would continue?

A. Just to the time they wanted to negotiate a contract, and when they got ready to negotiate a contract they would let us know and we would negotiate one with them.

Q. Was there any obligation on the part of the Company to continue past practice indefinitely?

A. I would say to the extent that we agreed to do it verbally.

(Testimony of George B. Schmidt.)

Q. For how long did you agree to do it?

A. Until the boys wanted to negotiate a contract.

Q. Until the I.W.A. wanted to negotiate a contract? A. That is right.

Q. What kind of work did these longshoremen do when they were hired during this period?

A. They loaded scows or boats.

Q. That is during the period you were employed there? A. That is right.

Q. Whose boats or scows were they? [621]

A. Sometimes some of the scows were Sommers Construction Company's, and fish companies, Astoria and Puget Sound, and Booth Fisheries to Pelican.

Q. Did the vessels the longshoremen loaded ever belong to Juneau Spruce Corporation?

A. No.

Q. Did Mr. Rutherford or the Juneau Lumber Mill, Inc., ever employ longshoremen to load barge loads of lumber for shipment to points in British Columbia or points in the United States?

A. No.

Mr. Andersen: To which I will object as improper cross-examination, may it please the Court.

The Court: Objection overruled.

Q. Were such shipments made to Canada and the United States?

A. Not by barge. It only went by the standard steamships.

Mr. Banfield: I think that is all.

(Testimony of George B. Schmidt.)

The Court: Well, the previous answer assumed that barges of lumber were sent out, and the next answer was to the effect that none was used. It seems to require clarifying, doesn't it?

Mr. Banfield: I think we have to keep in mind—I am not talking about—I asked if the Juneau Lumber Mill ever shipped any lumber by barge to British Columbia or——

The Court: That was the last question, but I thought [622] he said in the previous answer——

Mr. Andersen: He said it was all shipped on regular boats.

Mr. Strayer: He testified that longshoremen were not used to load barges for the Juneau Spruce and that the Juneau Lumber Mill never shipped by barge to the United States or Canada.

Mr. Banfield: That is all.

Mr. Andersen: That is all. Thank you, sir.

(Witness excused.)

FREEMAN SCHULTZ

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. Will you state your name please?

A. Freeman Schultz.

Q. Where do you reside, Mr. Schultz?

(Testimony of Freeman Schultz.)

A. Juneau.

Q. Mr. Schultz, when did you first come to Juneau? A. Late in January of 1947.

Q. And for whom were you employed at that time? A. Coos Bay Lumber Company.

Q. And what was the purpose of your visit to Juneau in January, 1947? [623]

A. To inspect the mill of the Juneau Lumber Mill.

Q. Did you inspect it? A. I did.

Q. Tell me the condition that you found at that time of the, say the buildings first. What was the condition of the buildings of the Juneau Lumber Mill, Inc.?

Mr. Andersen: To which I will object as incompetent, irrelevant and immaterial, may it please the Court.

The Court: Objection overruled.

A. This was a very cold period in the winter and it didn't give me a good opportunity to inspect the plant thoroughly, but it was quite obvious that there had been a fire, and the buildings showed signs of fire. The sawmill and remanufacturing building showed indications of fire all over it. Where I could see through the dock it showed the dock was in poor state of repair. The burner, as I remember it, had some holes. One or two smokestacks were down in the boiler room, they had fallen over.

Q. Mr. Schultz, let me stop you there. You say

(Testimony of Freeman Schultz.)

the dock was in poor repair? Were the buildings built on the dock itself? A. Yes.

Q. In other words, supported by piling?

A. It is all on piling. There is rock under part of it, but it is still on piling. [624]

Q. You stated that it was in bad repair. How bad repair?

A. I couldn't tell too closely because of the snow and ice on there, but it indicated signs of decay and it hadn't been more than for a period, I would say, of three or four years. It was obviously run down.

Q. This fire you said there was evidence of everywhere, was there a substantial loss by fire?

A. That I don't know. I could see the joists and beams in the ceiling and all that had been charred by fire. It was holding up the load and would be adequate.

Q. The fire damage had been repaired?

A. Yes.

Q. Completely repaired? A. No.

Q. This burner—what kind are you talking about? A. Refuse; incinerator.

Q. The thing that burns up waste slabs?

A. Waste slabs, and throws the sawdust all over town.

Q. This boiler room; what is that?

A. Where the steam is generated for the steam engines in the sawmill and for the electric turbine.

Q. What was the condition of any other structure; did you notice?

(Testimony of Freeman Schultz.)

A. They had a remanufacturing plant that was in the middle of the dock and looked like the Toonerville Trolley, things [625] leaning this way toward Jones'. It was very dilapidated.

Q. How was the log pond?

A. There was none. There was a steeve boom, or floating boom, along the edge of the dock and then there was a float that had a polesaw or drag-saw on it that they could cut the end of the logs off, but they had to stick the logs underneath the mill. It was a very poor location.

Q. How long is this dock?

A. The sawmill sets in the middle of it. From the extreme south end to the extreme north end—it isn't true north and south—I would say it is about eleven hundred feet, as I remember it.

Q. Is it all supported on piling?

A. Yes, at least along the front.

Q. The commercial sort or native piling?

A. Native; some spruce, some hemlock.

Q. How about the outbuildings, sheds and things like that?

A. The building that Mr. Rutherford called the retail shed was in a fairly good state of repair. He had another building on the face of the dock that contained the machinery of an ordinary repair shop; that is, lathes and blacksmith's forge and welding outfit and stuff like that. That was quite,

(Testimony of Freeman Schultz.)

oh, dirty, and looked to me more as a firetrap. [626]

Q. What was the condition of the machinery in this plant? Take the power house, for instance.

A. Well, in the power house it was quite evident that there was need of considerable break work. The boiler fittings, they were down in places and bulged out in other places, and then the roof had quite a sag in it and, as I said before, one or two stacks was clear down, and the trestlework over the top of the boilers had quite a sag in it; just in need of repair.

Q. How about the burner?

A. Well, they had a single screen in it rather than a normal double screen. It was a fire trap rather than being an efficient burner. It had a conveyer leading to it. At one time it had a place in it that you could cut wood out of the burner, out of the conveyer going to the burner, and that had ups and downs on it. It wasn't on a true course, and the burner itself had holes where the sheetmetal had rusted through.

Q. How was the condition of the machinery in what you call the band room where primary or first cuttings are made?

A. The band mill—the wheel had been greased to protect it from rust. It looked to me like a good standard make of band mill, and appeared taken care of, a very good unit.

Q. And the carriage?

A. The carriage showed lack of care. In some

(Testimony of Freeman Schultz.)

places it had [627] been patched, in some places with wood and some places with metal. It was an old-fashioned carriage, obviously not worth much value.

Q. How about the various pieces of machinery in the mill, such as planers and resaws, and various type motors and things, what was the general condition of them?

A. I would say they looked like they had been kept in a fair state of repair.

Q. Were they fairly well adapted to modern use, or had they had necessary improvements on them?

A. I objected to the size of the edger. It would be too small for the type of business I thought we would go after. The trimsaw looked to me to be adequate. The main resaw was, if the head were renewed, a very modern unit, but the placing of the machinery—to get to the resaw and away from it—appeared very inadequate. Of course I didn't see the green chain in operation. None of this mill was in operation. It was a case of observation. It happened to be a little bit unique. I had never seen one quite that way.

The Court: Wouldn't it save time to have the witness state the condition he found the mill in instead of having his attention called to each phase of it?

Mr. Banfield: If the Court please, I have finished that phase of it. [628]

(Testimony of Freeman Schultz.)

Q. Mr. Schultz, when next did you come to Juneau?

A. The fourth day of June, 1948.

Q. In the meantime, had the Juneau Spruce Corporation purchased all these assets?

A. Yes.

Q. When this purchase was made was Juneau Spruce Corporation a new company or had it been in existence before? A. No, that was new.

Q. A new corporation?

A. A new corporation.

Q. Were you an official of the corporation at the time it was formed and afterwards?

A. I helped form it. I was in on the details of the formation of the corporation, and I bought stock and I was elected a Director at the first meeting.

Q. Have you participated in the affairs of the Company ever since?

A. As a Director, or one that would know general policy or detail in the formation of the Company.

Q. Were you acquainted with the plans of the corporation at this time?

A. I helped make them.

Q. What was your plan with regard to any changes in the physical properties themselves and the ultimate use to which they were going to be placed after the plan was [629] executed, and how long it would take? Tell your plans generally.

(Testimony of Freeman Schultz.)

Mr. Andersen: I object to that as hearsay.

The Court: It is what they did. They might not have carried out the plans.

Q. Tell us what you did in changing things and in changing the production and plant itself?

A. What I did?

Q. What the Directors did?

A. Well, the first thing we wanted more production through the mill.

Mr. Andersen: I move that be stricken, may it please the Court, as not responsive to the question, what was done?

A. We asked that a second shift be put on the mill to get production.

Q. Was that done? State if a second shift was put on and when, etc.

A. I can't tell you when, but as soon as Mr. Hawkins could get the second shift going we asked that it be done.

Q. What else was done with regard to the plant itself? A. That preparation be made——

Q. Don't tell what the Directors asked Mr. Hawkins to do; tell what was done by Mr. Hawkins or anybody else as the result of the Directors' instruction. If they sold [630] equipment or disposed of the plant or what did they do?

A. We bought more equipment.

Q. Tell us what you did.

A. We asked that Edna Bay——

Mr. Andersen: I move that be stricken as not responsive.

(Testimony of Freeman Schultz.)

The Court: Yes.

Q. I don't want you to state what you asked somebody to do, but what Juneau Spruce did.

A. They spent a half million dollars worth of equipment for the logging camp at Edna Bay. We purchased another tugboat.

Q. Did they do anything with respect to the dock property? A. Yes.

Q. What did they do?

A. A lot of these docks were taken out and replaced with rock. The remanufacturing shed was torn down. The machine shop was removed from the dock face and then put in a better location for plant operation and fire protection.

Q. Was there any particular change in the mill itself during the operating season of 1947?

A. No; you couldn't repair and operate the mill at the same time. It had to go along as best it could.

Q. Were there outside repairs done, outside work? [631]

A. These buildings were taken down.

Q. Was any additional land purchased?

A. Yes, on the north end of the property, between there and the City Dock property and the City Cafe.

Q. During the winter shutdown of 1947-1948, what was done at the plant?

A. As I remember, there was about $60,000 in repairs in the boiler room itself.

Q. You mean just in the power house?

(Testimony of Freeman Schultz.)

A. Just in the steam boilers, and it was about—it seems foolish—eight or ten thousand dollars' worth of parts for the electrical turbine, ordered and installed.

Q. Were these expenditures necessary?

A. Well, they were advisable. The Allis-Chalmers representative that was supposed to be an expert on turbines recommended that, and you could almost carry them in your arms, but they cost a lot of money.

Q. Tell us what else was done.

A. The edger was removed from the sawmill and there was a new—well, larger—one, and a larger motor, which meant they had to go back with a power line to the power house. There was new transformers on account of the increased use of electricity installed. There was a small replacing of the machinery in the planing mill to get a better flow of lumber. There was a transfer chain installed in [632] the mill itself, so that the lumber would flow through the mill with the least interruption and the green chain itself was changed. The machinery from the remanufacturing plant was located underneath the mill to better advantage than it had been.

Q. From an operating standpoint, what was the condition of the mill when you arrived on June 4, 1948?

A. Well, it was improved over what it was when I saw it in 1947.

(Testimony of Freeman Schultz.)

Q. Had the money, in your opinion, been prudently expended there?

A. Say that again?

Q. Had the money that was expended on these changes been prudent and wise?

A. Largely. It would be a question of opinion or judgment of different individuals.

Q. In other words, what you mean to imply by that——

Mr. Andersen: I object to that. The question has been asked and answered and it is calling for the witness' conclusion.

The Court: Yes, unless there is something in the question which doesn't call for what appears to be merely speculative matter. That would end it.

Q. Mr. Schultz, when you arrived in June, 1948, what quantity of lumber was this mill capable of producing? [633]

Mr. Andersen: I am going to object to this as cumulative, may it please the Court. They have already had a couple of witnesses testify to this general point.

Mr. Banfield: If the Court please, we have had Mr. Schmidt testify that when he left in December, 1947, the mill was in condition in his opinion to produce a certain amount of lumber. That is the only testimony we have had on that point of which I have any recollection.

The Court: Objection overruled.

A. The mill was down and we would have to go

(Testimony of Freeman Schultz.)

back to your records of March and April, when the mill started up. As I recall those, they indicate apparently 100,000 feet in eight hours.

Q. Were those records of the first days of production and the short period they worked in the spring of 1948, be indicative of what the mill could produce on an average for 1948?

Mr. Andersen: I object to that as calling for the opinion of the witness.

The Court: Objection overruled.

A. They should increase over a period of years. I have always found that mill efficiency increases as time went on and the men got more accustomed to their jobs and at this time there was a big snow, at the time they were starting the mill, and they had quite a bit of difficulty around [634] the mill, getting lumber to and from the mill.

Q. Did you take over as Manager of the Juneau Spruce Corporation? A. Yes.

Q. On what date?

A. I arrived here the fourth of June; actually I was the Manager before that.

Q. For how long?

A. Oh, the first of June.

Q. Mr. Schmidt, when you took over——

Mr. Andersen: Mr. Schultz.

Q. Mr. Schultz, I am sorry—when you took over on June 4 how many men were employed there?

A. Eight, eight or ten.

Q. Are you speaking of mill hands or overall?

(Testimony of Freeman Schultz.)

A. That is all the men I found at the plant.

Q. Will you tell us what activities were engaged in by the Juneau Spruce Corporation after that date? What did the Company do? Did it continue, close the mill or operate, or how many men were employed, or what?

A. Immediately after that date there was nothing done. We continued on with these eight to ten men on a repair basis. There was a job of patching things up that needed to be fixed quite obviously, until—I am not quite sure of the date, but I remember it was a Saturday afternoon [635] that a bunch of them came and wanted to know——

Mr. Andersen: I will move—I will object to this as incompetent, irrelevant and immaterial.

Q. Just tell what happened.

A. A group of men appeared.

Q. What did they do after they came?

A. They came in the office.

Mr. Andersen: I ask that a foundation be laid, may it please the Court.

Mr. Banfield: We don't know what men they are yet.

Mr. Andersen: I don't care if you know. I am entitled to a foundation.

The Court: The time and the place.

Mr. Andersen: And persons present.

A. The men came into the office and said they were former employees——

(Testimony of Freeman Schultz.)

Mr. Andersen: I move that be stricken unless a proper foundation is laid.

The Court: I think it is preliminary. Objection overruled.

Q. About what time of year was this Saturday afternoon?

A. Right around the Fourth of July.

Q. 1948? A. 1948.

Q. And exactly where were you at this time? [636] A. In the office.

Q. And who came?

A. The I.W.A. President, and I would say about four or five men.

Q. Whom did they represent themselves to be?

A. The I.W.A.

Q. Now, Mr. Schmidt—Mr. Schultz, I mean—what did you do with these men?

A. Talked to them.

Q. Were they employed by the Company?

A. Not that day.

Q. When? If they were employed, when?

A. After the sixth, I think it is the sixth, a period of two or three days in there, as I remember it. The Saturday was the third, I think, of July, putting the fourth on Sunday—Monday, Tuesday—probably Tuesday, the sixth of July, the men came through and we began hiring a crew.

Q. Now, tell us what that crew did until the mill opened.

A. They started repairing machinery and ad-

(Testimony of Freeman Schultz.)

justing machinery around the mill in preparation for the opening.

Q. How many men were employed at the time of the opening?

A. About fifty-seven, as I remember it.

Q. And did that number increase as the mill continued to operate? A. A little bit. [637]

Q. Was that enough to operate the plant?

A. It was enough to operate, but not to full efficiency.

Q. To what exent was the plant operated; that is, from a production standpoint?

A. All the machinery was operated, but we will say about three-fourths of the efficiency, the reason being that we had certain key men, but other key men we would not have. We had to upgrade or take common labor on jobs a little beyond their ability. As a result the efficiency was down.

Q. Why was it you were not able to get all the labor you wanted?

A. There was a picket line outside there.

Mr. Andersen: I move that be stricken as calling for a conclusion and opinion of the witness.

Q. In what way——

A. A good many men will not go through a picket line, and we were not sure how long we could operate with the picket line—or when the picket line would be removed. We did not care to go ahead and hire a man under those circumstances.

Q. In other words, you didn't want to build up a full force? A. That is right.

(Testimony of Freeman Schultz.)

Q. How long did this condition continue, of just partial operation? [638]

A. Until there was no room on the dock, until about the eleventh of October, 1948.

Q. Why was it you did not want to operate at full production from July 6 to October 11?

A. We didn't want to accumulate a number we couldn't ship. It will deteriorate.

Q. Were you shipping any lumber during this period? A. A couple barge loads.

Q. And when did you ship those barge loads?

A. One late in August, and the other late in September.

Q. Where did the barge shipped in August go to?

A. The tugboat "Santrina" had orders to take it to Prince Rupert.

Q. And was it unloaded at Prince Rupert?

A. No.

Q. Then where did it go to?

A. To Tacoma.

Q. Was it unloaded in Tacoma? A. Yes.

Q. This second barge load—where did you send that? A. To Tacoma.

Q. Direct? A. Direct.

Q. Was it unloaded there? A. No. [639]

Q. How long did it stay in Tacoma?

A. What?

Q. How long did it remain in Tacoma unloaded?

A. Until April 18, this year, 1949.

(Testimony of Freeman Schultz.)

Q. Is it now unloaded? A. Oh, yes.

Q. Now, did you try to ship any lumber by any other methods? A. Repeatedly.

Q. Wnat methods did you try?

A. We tried to ship some by the regular commercial steamers.

Q. To where?

A. Just to put it on the steamer. We had a market for it in Seward. In Alaska we had a market, and we had a market in the States, and we had an export market.

Q. The market in Alaska—how large a market was that?

A. Through our two retail yards we normally expect to merchandise ten million feet annually.

Q. Don't you have three?

A. Yes. One here.

Q. How much can you sell through those three?

A. Approximately twelve million.

Q. Were you successful in getting your lumber delivered to your retail yards in Alaska?

A. The yard in Juneau is at the plant, so I am referring to the plants in Anchorage and Fairbanks. [640]

Q. As to those two, were you successful in getting it on a steamer?

A. Not on a steamer.

Q. Do you know why you couldn't get it on a steamer?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial.

(Testimony of Freeman Schultz.)

The Court: Objection overruled.

A. The steamship company advised us that——

Mr. Andersen: I move that be stricken as hearsay.

Q. Do you know why you could not get it on the steamer?

Mr. Andersen: Same objection.

The Court: Same ruling.

Q. Answer yes or no. A. Yes.

Q. What was the reason—you don't need to tell what somebody said.

A. The longshoremen would not load it.

Q. Were you able to deliver any lumber to these retail yards by any other methods?

A. We delivered some to the Fairbanks yard.

Q. By what means?

A. By barge from Juneau to Haines and truck from Haines to Fairbanks.

Q. Who loaded this barge in Juneau?

A. The Woodworkers. [641]

Q. That went to Haines. You mean the mill hands? A. Mill hands.

Q. Was it your own barge?

A. We actually loaded it on the stern of the tugboats. We could take a barge or boat. It is our own barge or our own boat.

Q. How did you get it to Fairbanks?

A. By truck.

Q. How much did it cost to deliver the lumber from Juneau to Fairbanks by that method?

(Testimony of Freeman Schultz.)

A. About $54.

Mr. Andersen: That is immaterial, your Honor.

The Court: It is immaterial unless it is compared with something else.

Mr. Banfield: I am laying a proper foundation for showing what our damages were and how it affected our operation.

The Court: I assume then you will follow it up?

Mr. Banfield: Surely.

The Court: You may proceed.

Q. How much did it cost to deliver the lumber from Juneau to Fairbanks by that method?

Mr. Andersen: I object to that. It is purely speculative.

The Court: Objection overruled. [642]

A. As I said, $54 a thousand green lumber, dry lumber, all lumber.

Q. $54 per thousand feet?

A. Thousand feet.

Q. Mr. Schmidt—Mr. Schultz—did you try shipping any of this lumber to Anchorage?

A. Are you referring to the lumber that went from Haines?

Q. Yes. A. Yes.

Q. How much did you ship that way?

A. None. I tried but I couldn't get a trucker that would haul.

Q. Did you try shipping any by steamer to the United States? A. Yes.

Q. And were you successful? A. No.

(Testimony of Freeman Schultz.)

Q. Do you know the reason why you were not successful? Do you know? Yes or no.

A. Yes, I know.

Q. What was the reason?

A. The longshoremen wouldn't load it.

Q. In the absence of steamship service, what other methods could there be to get it to the States?

A. Barge.

Q. Is that all? [643]

A. Our own equipment.

Q. Mr. Schultz, you said that the longshoremen were the cause of your being unable to load on commercial steamers. Is there any other way you can get it on steamers without the use of longshoremen?

A. Not that I know of.

Q. Will the steamship companies let you load it on the steamers and without the longshoremen?

A. I never asked them.

Q. Have you ever seen it done? A. No.

Q. In shipping to the States, to what ports could you ship lumber?

A. Puget Sound ports.

Q. Any place else?

A. British Columbia.

Q. And did you try shipping it through British Columbia? A. Yes.

Q. Where did you try to ship it?

A. Prince Rupert.

Q. Were you successful? A. No.

Q. What was the reason?

(Testimony of Freeman Schultz.)

A. The longshoremen would not unload it.

Mr. Andersen: I move that be stricken as a conclusion [644] and opinion of the witness, no foundation having been laid for that. It is all hearsay.

The Court: Objection overruled.

Q. Mr. Schmidt—Mr. Schultz, I am sorry—did you make any investigation or cause any to be made for you regarding the possibility of shipping through other ports in Briitsh Columbia?

A. No.

Q: Now, I am talking about at all times since you took over as Manager down there, you took over—at all times since you took over the Juneau Spruce Corporation's operations and management, did you attempt to ship to any other places on Puget Sound than Tacoma?

A. We investigated other places, but we didn't try to ship to other places.

Q. What areas did your investigation cover?

A. Port Townsend and Anacortes and Seattle.

Q. Just those three places?

A. And Tacoma.

Q. And Tacoma. And what was the result of that investigation? A. That——

Mr. Andersen: I am going to object to this as calling for a conclusion and opinion of the witness, may it please the Court.

The Court: If he knows he may answer. [645]

A. The ports of Tacoma and Seattle were found to be the only ones we would have with proper

(Testimony of Freeman Schultz.)

facilities down in Puget Sound for disposing of the products.

Q. And were they open to you—Seattle and Tacoma? A. No.

Q. Now, did you actually try shipping any to Seattle? A. Yes.

Q. Were you successful in getting it unloaded?

A. No.

Q. Do you know why?

Mr. Andersen: The same objection, your Honor.

The Court: Objection overruled.

Q. Do you know why? A. Yes.

Q. What was the reason?

A. The tugboat captain was told not to pull into the dock.

Mr. Andersen: I object to that as hearsay.

Q. What was the reason?

A. He was not allowed to dock.

Mr. Andersen: May it please the Court, I move the previous answer be stricken.

The Court: Yes, that part of the previous answer based on conversation will be stricken.

Mr. Banfield: Will the Reporter repeat the last question and the last answer? [646]

Court Reporter: Q. "What was the reason?" A. "He was not allowed to dock."

Q. Who did you have make this investigation for you? A. Mr. Harris.

Q. Who is Mr. Harris?

Mr. Andersen: May it please the Court, I move

(Testimony of Freeman Schultz.)

all this witness' testimony be stricken. It turns out that somebody else made the investigation for him. Obviously it is hearsay.

Mr. Banfield: We are entitled to show what agents of the Company——

The Court: This question is competent. The objection is overruled as to this question. We will see what develops.

Q. Who was Mr. Harris?

A. An employee of the State Steamship Company.

Q. Doing this on your behalf?

A. Yes, sir.

Q. At your instructions? A. Yes, sir.

Q. Did anyone else make any investigation for you? A. Mr. Rogers.

Q. Who is Mr. Rogers?

A. He is our Portland attorney.

Q. Was there anyone else engaged in this investigation?

A. I was down there mayself one trip. [647]

Q. And was the result of all these investigations the same? A. All the same.

Q. Did Mr. Winston Jones make an investigation? A. Yes.

Q. Who is Winston Jones?

A. He is the District Manager of the State Steamship Company in Seattle.

Q. Is he the same Winston Jones that formerly was with the Alaska Transportation Company?

A. That is right.

(Testimony of Freeman Schultz.)

Q. Did Mr. Jones and Mr. Harris make any investigation in Canada?

A. Mr. Harris did.

Q. When was that?

A. That was the time that the barges were first started down to Prince Rupert.

Q. What was the result of his investigation?

A. Those barges were unloaded.

Q. You say that this was at the time that what?

A. You asked me if anyone made investigations at other ports. Mr. Harris did, but the lumber was unloaded in that instance.

Q. Was any investigation made in Canada thereafter?

A. I have had communications with Mr. Youngs.

Q. What was the result of that investigation?

Mr. Andersen: I object to that as hearsay and calling for the conclusion and opinion of the witness.

The Court: If he knows he may answer.

A. We were advised the longshoremen would not unload the lumber.

Q. Did that investigation apply in one place or more than one place?

Mr. Andersen: Same objection, hearsay and calling for the conclusion and opinion of the witness.

The Court: If he knows he may answer.

A. Mr. Youngs; it was just Prince Rupert.

Q. Now, after the mill—or what happened on October the 11th? Answer that—1948?

(Testimony of Freeman Schultz.)

A. We closed the mill.

Q. Why did you close the mill?

A. There was no more room on the dock to store lumber.

Q. Did you have any other places to store it except on the dock? A. No.

Q. Would it be practical to store it anyplace else? A. No.

Q. Was that the sole reason for closing down?

A. Yes.

Q. What was the cause of there being so much lumber on the dock? [649]

A. Because we could not ship it.

Q. Now after October 11 what activities took place at the mill?

A. We had repaired the mill, improved the mill and plant properties as a whole.

Q. Just state the general nature of those improvements during this last winter.

A. We moved the retail shed to the property line to increase our storage area. We built a log pond; we build a bridge connecting the north and south yards; we constructed a fence around the property; we repaired the burner and we did considerable work inside the mill itself in the resaw room.

Q. What type of work is that?

A. We relocated some of the machinery and installed this method of getting the lumber out of the mill.

(Testimony of Freeman Schultz.)

Q. Was this relocation any change in the work done by Mr. Rutherford or the work done by Mr. Hawkins? Who had put it in there originally?

A. Yes, it changed both of them. We changed the location of the green chain that Mr. Hawkins had put around the mill. We ran it a different direction, and then we changed the flow and method of getting the lumber out of the mill itself.

Q. Who had originally determined the flow and method of [650] getting it out of the mill?

Mr. Andersen: I object to that as incompetent and irrelevant and immaterial.

The Court: Unless it is connected with production it is immaterial.

Mr. Banfield: Counsel for defendant has attacked the work done down at the mill by cross-examining other witnesses. He asked if everything Mr. Hawkins did had been torn out and done over again and all been charged as expenses against our damages. That is the purpose. If we have to call the witness back again, I will have to do it. I am trying to lay a foundation here for our expenses attributed to and as a result of this strike.

The Court: The expense of making these repairs? You don't attribute that?

Mr. Banfield: No.

Mr. Andersen: I am surprised at that. I still don't believe he has a right to impeach his own witness.

Mr. Banfield: I am impeaching my own witness?

(Testimony of Freeman Schultz.)

Mr. Andersen: All counsel is trying to do is impeach Mr. Flint, his own witness.

Mr. Banfield: Who?

Mr. Andersen: Mr. Flint, his own witness. That is correct.

The Court: A party has a right to contradict his [651] own witness, as distinguished from impeaching.

Mr. Banfield: As a matter of fact, he confirmed Mr. Flint.

The Court: Even though it is shown that two men disagreed as to some installation that isn't part of the case for either one of the parties, as I see it. Any evidence as to improvements made, unless connected with an increase in production or decrease in production would be immaterial.

Mr. Andersen: Also, I further object to it as speculative, may it please the court—entirely speculative.

The Court: You can hardly say whether or not improvements made at a certain time has any speculative element in it.

Mr. Andersen: Not as to improvements.

Mr. Banfield: There is another purpose, and that is this: counsel attacked the witness Flint and tried to imply he was employed there as an official of the Union and not doing anything and getting paid a big exorbitant wage and no need for it.

The Court: This, if it is sought to be elicited, that Flint was not engaged in unnecessary work, would be perfectly proper.

(Testimony of Freeman Schultz.)

Mr. Strayer: The importance of this testimony as I see it is that plaintiff must show, to prove damage, that before the strike and during the ensuing year they could have [652] manufactured and sold a certain amount of lumber. Mr. Andersen attacked it on the basis that it was poorly constructed by Mr. Hawkins and there were bottlenecks, and Mr. Schultz had to tear out all of it and put in new. To meet that kind of contention, we are entitled to have Mr. Schultz, the new Manager, tell what changes there were as the result of the improper construction methods of Mr. Hawkins. As the basis for his opinion of what the production would be from the shutdown to the present time, and for the further reason, he needs that as a basis for production after he made his extended investigation.

The Court: If it is connected with the production it is material, otherwise I can't see that it is.

Mr. Andersen: In the words of the poet, "Methinks these gentlemen protest too much." I was examining Mr. Flint, as your Honor will recall; Mr. Flint says the mill was full of bottlenecks and a lot of equipment Mr. Hawkins put in had to be taken out. I was examining him and that came out voluntarily, as far as I was concerned. The Court cut off that line of questioning as far as I was concerned, though I endeavored to pursue it. I think the Court's ruling was incorrect, maybe I am wrong—at least the Court ruled and I desisted

(Testimony of Freeman Schultz.)

too. I submit all this testimony is immaterial. The gentleman may testify what was done, but why should they try to rehabilitate Mr. Flint? They are trying to show he was a fine [653] boy, where, as a matter of fact, their own witness, subject to preliminary examination, said the mill was full of bottlenecks.

Mr. Banfield: He can't back that up in the record. This has gone a bit too far. I think the Court should caution counsel that it should not be permitted.

The Court: There is nothing that prevents a party from contradicting his own witness by another witness. All I am calling attention to is that whatever work was done down there, to be made competent as proof, would have to be connected up with production. The objection will be overruled, with the admonition to be brief about this and connect it up with production. We are not making very fast progress in this case.

Q. Now, Mr. Schultz, in making these changes you spoke of and relocating the green chain, what was your purpose in doing that?

A. To relieve that bottleneck. The lumber backed out—couldn't get out of the mill onto the green chain; bottlenecking. It was to relieve that.

Q. How did you rebuild the green chain?

A. We moved a section of it over and we installed a new section in there so we delivered lumber onto the green chain on the lower floor in four places rather than one.

(Testimony of Freeman Schultz.)

Q. Was that an improvement over what Mr. Hawkins had, or a [654] change from what Mr. Hawkins had done?

A. In my opinion, a distinct improvement.

Q. Was any part of this due to improper installation by Mr. Hawkins? A. No.

Mr. Andersen: I object to that as calling for an opinion of the witness.

The Court: Objection overruled.

A. This was entirely new from anything that Mr. Hawkins had.

Q. You heard the testimony of Mr. Flint?

A. Most of it.

Q. Is that the bottleneck to which he referred?

Mr. Andersen: I object. One witness cannot comment upon another.

The Court: Objection sustained.

Mr. Strayer: Are we precluded from showing that Mr. Flint testified that the bottleneck consisted of the backing up of the green chain?

Mr. Banfield: I asked if it was the same as Mr. Flint testified about.

The Court: The question—having already testified as to the chain—whether it is the same incident to which Mr. Flint testified is a matter for the jury.

Q. How many green chains do you have down there? A. One. [655]

Q. Now, Mr. Schultz, have the longshoremen ever contacted you or talked to you regarding a settlement of this dispute? A. Yes.

(Testimony of Freeman Schultz.)

Mr. Andersen: May I interrupt? Will you read the question, Miss Reporter?

Court Reporter: "Now, Mr. Schultz, have the longshoremen ever contacted you or talked to you regarding a settlement of this dispute?" A. "Yes."

Q. You may answer the question.

The Court: He has answered.

A. Yes.

Q. When was this?

A. I would say about the middle of October, 1948.

The Court: When you say "longshoremen" you should indicate whether it is the Local or the International.

Mr. Banfield: Yes.

Q. Who contacted you?

A. Mr. Vern Albright wrote me a letter requesting a conference.

Q. And did you have a conference?

A. Yes.

Q. Who was present at the conference?

A. Mr. Albright and Mr. Pearson, Mr. Flint and Mr. Francis, as I recall, and Mr. Banfield and myself. [656]

Q. And who did Mr. Albright represent himself to be?

Mr. Andersen: I object, the same objection as heretofore, so far as the International is concerned—hearsay, incompetent, irrelevant and immaterial.

The Court: Objection overruled.

(Testimony of Freeman Schultz.)

A. Mr. Albright said that he was the International Representative, appearing on behalf of Mr. Bulcke, and Mr. Pearson was the President of the Local.

Q. Tell me, what did they say and who said it? Who did the talking?

A. Mr. Albright did practically all of it.

Q. That would be for the Local and the International? A. Well——

Q. You said Mr. Albright did practically all the talking? A. That is right.

Q. Who talked for the Company?

A. I did.

Q. What did Mr. Albright say?

A. The first thing he told me was that they had a picket line out there and were prepared to keep it there for twenty years if necessary, and he wanted to negotiate.

Q. What was the reply of the Company to that conversation?

A. It was his business how long he kept it there.

Q. Is that what you said?

A. That is right. [657]

Q. And he said he wanted to negotiate?

A. That is right.

Q. Is that what you said?

A. That is right.

Q. Did he state what he wanted to negotiate, or what terms of negotiation—tell us what he said.

A. He had a letter in his pocket that said Mr. Bulcke had a proposal that was made in Portland,

(Testimony of Freeman Schultz.)

and he had been down there and the letter instructed him to come and work out an agreement with us up here.

Q. And what was your reply to that?

A. That we were—we had instructions not to negotiate, but we were willing to go around those instructions from my superior, if it could result in an agreeable settlement.

Q. Did you—you said you told them, "We have instruction not to negotiate." Who did you mean by "we"? A. The Company.

Q. The Company had instructions?

A. The President of the Company had told me not to sign any contracts here, that they had to be signed in Portland.

Q. Was the Company willing to negotiate in Portland at that time? A. Yes.

Q. What was the purpose of this meeting in Juneau?

A. The purpose was to get some facts as to the situation up [658] here.

Q. Who wanted the facts?

A. Mr. Bulcke.

Q. Mr. Albright said what?

Mr. Andersen: I assume this is conversation with Mr. Albright, and my same objection goes to it, your Honor?

The Court: Yes.

Q. What did Mr. Albright say he was there to do?

A. To try to reach an agreement.

(Testimony of Freeman Schultz.)

Q. Now, what was the reply of the Company to his proposal to reach an agreement?

A. While we had a contract with the Woodworkers that we felt covered this work, that if there was a dipsute between the Woodworkers and the Longshoremen covering the same job, if the two of them could get together on some sort of basis we could operate and work on, I would be willing to recommend it to the Board or the President of the Company for adoption.

Q. What was done in pursuance to that exchange of conversation?

A. The meeting was over.

Q. Was there any statement by the I.W.A. or the I.L.W.U. as to whether or not they could get together?

A. Yes. The Woodworkers agreed to get together with them.

Q. Did the I.L.W.U. agree to that? [659]

A. Yes.

Q. Has the I.L.W.U., or I.L.W.U. Local 16, ever come back to tell you what the result of those conferences were? A. No.

Q. Was that the only time that you were contacted by the I.L.W.U. since you came here, or by the Local? A. No.

Q. There was another time? A. Yes.

Q. What was that time?

A. I arrived by Pan American early in the afternoon, and that same afternoon—I don't know how they found it out——

(Testimony of Freeman Schultz.)

Q. What arrival are you speaking of?

A. June 4, when I first came here.

Q. Go ahead.

A. The telephone rang and a man said his name was Chris Hennings. He asked me if I would appear at a meeting. He explained he was the Alaska Representative, as I understood it, of all C.I.O. Unions, as I understand it, and asked me if I was willing to come to a meeting of the Union.

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial and ask that it be stricken.

Mr. Banfield: It will be connected up.

The Court: If it isn't, it will be stricken. [660]

Q. Did he say who would be there?

A. No, he didn't.

Q. Did he say he was acting on behalf of Local 16 or the International, or at their request?

A. I didn't get it quite that way. I was new and didn't know what he was getting at. As I understood it, it was all C.I.O. Unions.

Q. Now, Mr. Schultz, if there had been no picket line, at the mill, what would you have been capable of producing in lumber in 1948?

Mr. Andersen: To which I object, may it please the Court, as incompetent, irrelevant and immaterial. I fail to see where the picket line has anything to do with that. The testimony is that there are a dozen entrances.

The Court: You can cross-examine on it. Objection overruled.

(Testimony of Freeman Schultz.)

A. As I found the mill when I arrived here in June in 1948 I would say that it was capable of producing in excess of one hundred thousand in an eight-hour shift. That would mean on two, in excess of fifty million in a year.

Q. Do you know what season of the year the plant—in the fall, how late could it have operated, in the fall? A. In 1948?

Q. Yes.

A. About the first of December it would have gone down. [661]

Q. Were the winter conditions such——

A. It began to freeze up the middle of November, the first of December. You can operate with some ice, but not too much.

Q. Would this figure of production allow for normal shutdown, accidents and interruptions?

A. Yes. Day after day you produce. I meant an average of one hundred—we think, one hundred is one hundred thousand—we think in terms of a unit being a thousand feet.

Q. Did the Juneau Spruce Corporatoin have on hand and available to it a sufficient quantity of logs to produce this amount of lumber in 1948?

A. Oh, yes.

Q. How many logs were in Juneau?

A. About eleven million.

Q. Did you have any logs any place else?

A. It seems to me every contractor in the country was after me as to when I would take his logs.

(Testimony of Freeman Schultz.)

Mr. Andersen: I move that be stricken.

Q. I meant, did the Juneau Spruce own any logs any place else? A. At Edna Bay.

Q. How many?

A. About two hundred thousand feet in the water, and nine to ten million feet down in the woods.

Q. Did you own any logs still in the possession of contractors? [662] A. No.

Q. Or contract loggers? A. No.

Q. Had the Company agreed to buy any logs from contract loggers? A. Yes.

Q. How much had it agreed to buy?

Mr. Andersen: To which I will object, may it please the Court, as not the best evidence.

The Court: Objection overruled.

A. As I remember it——

Mr. Andersen: I add a further objection to all this testimony that it is speculative.

Mr. Banfield: I am afraid my last question might be somewhat confusing. I will withdraw it and proceed this way:

Q. Mr. Schultz, were there logs available from private loggers? A. Yes.

Q. And do you know how much was available in 1948 from private loggers?

A. From June on, I had been advised how much would be available during the winter and spring.

Q. By whom?

A. Mr. Hawkin's report.

(Testimony of Freeman Schultz.)

Mr. Andersen: I object to that as hearsay. [663]

A. And copies of letters I have seen.

The Court: That is hearsay. It will be stricken.

Q. Could you have bought an additional thirty million feet of logs on the market? A. Yes.

Q. In Alaska? A. Yes.

Mr. Andersen: I object to that as speculative.

The Court: Objection overruled.

A. I could have got forty million.

Mr. Andersen: I move that be stricken as not responsive.

The Court: For the benefit of counsel, the objection which has been frequently made that the answer is not responsive, is available only to the party making the examination. Objection overruled and motion denied.

Mr. Andersen: I think your Honor is correct in that ruling.

Q. Did you have the tugboats necessary to bring these logs into the mill? A. Yes.

Q. How many did you have?

A. We have three large ones here, and then we have two small ones that can tow logs in a short area around Juneau, in addition to three large ones. [664]

Q. Did you have an adequate labor supply ready and available? A. Yes.

Q. And necessary financing to finance the mill and pay the operating expenses?

A. That is right.

(Testimony of Freeman Schultz.)

(Whereupon, the jury was duly admonished and the trial was adjourned until ten o'clock a.m. May 9, 1949, reconvening as per adjournment with all parties present as heretofore and the jury all present in the box; whereupon the witness Freeman Schultz resumed the witness stand and the Direct Examination by Mr. Banfield was continued as follows:)

Mr. Andersen: Could I interrupt just a moment? I assume from the way the case is going plaintiff is getting near the end. In order for us to plan, if counsel could give us an idea when he will get through——

Mr. Banfield: If the Court please, I think we will be fifteen or twenty minutes with Mr. Schultz, and then we have another witness dealing with damages and bookkeeping figures. I don't believe we will be very long.

The Court: Is that the rest of your witnesses?

Mr. Banfield: One or two short witnesses after that.

The Court: Counsel is not interested in how many but when you will get through.

Mr. Banfield: We have only two short witnesses after Mr. Boles and we expect to finish today. [665]

Q. Will you state your experience in the lumber business briefly?

A. I have been manager or assistant manager of mills since 1940. I have been superintendent of mills since 1930, and I had various work as labor

(Testimony of Freeman Schultz.)

foreman and other work like that from 1925 until 1930.

Q. In other words, you have an experience of about twenty-four years in the lumber business?

A. Plus working in summertime when I was going to school, going to college.

Q. How many mills have you actually managed?

A. I would say about ten, seven at one time—small mills.

Q. You testified last week regarding the repairs done at this mill in 1948. If the mill were operating in the regular fashion, when would repair work be done?

A. During the winter shut-down period.

Q. How long would that be each winter?

A. Two months at least.

Q. Would there be any repair or maintenance work done regularly through the other ten months?

A. Oh, yes. Ordinary maintenance and repair. Things need to be replaced as you go along.

Q. Is this repair program completed now?

A. At Juneau Spruce?

Q. Yes. [666] A. No.

Q. Would you give us a comparison of the amount of repair work which you did in the year 1948 as compared with what you would have done if the mill operated in 1948 and then had a shut-down last winter?

A. If we had been operating two shifts during

(Testimony of Freeman Schultz.)

the current year 1948, we would have spent more money on repairs than we have now, due to the fact that chains and machinery wear out and have to be replaced. We have a maintenance crew all the time that the mill is operating.

Q. Was this repair work done during the year 1948 done with a large or small crew? Tell us how many men were used on that job?

A. We have used eight to ten men. It will vary a little bit.

Q. When did that crew go on repair and maintenance work in 1948?

A. As soon as the mill shut down in October.

Q. It has been a repair job from October until now? A. That is right.

Q. How many would you normally employ in the wintertime for your annual overhaul?

A. Of course that would be a shorter season, two months. Approximately twenty-five to thirty men.

Q. Did you buy or install any new machinery during 1948? A. No new machinery. [667]

Q. Did you install any new equipment of any kind?

A. Some new chain and some new sprockets and as we have made some improvements in the mill we used all the old material we could find there and we had to buy some, a very normal sum.

Q. Mr. Schultz, do you know the market value of logs at Juneau during 1948? A. Yes.

(Testimony of Freeman Schultz.)

Q. What was the market value of logs during that period? A. $23 at Juneau.

Q. That would be delivered to Juneau?

A. No. The practice in the northern half of Southeastern Alaska is that the logs are purchased at the logger's camp and the towing is for the account of the mill.

Q. That is $23 at the logging camp?

A. That is right.

The Court: Is that a log, or what is the unit?

A. A thousand feet of logs, Forest Service scale.

Q. $23 per thousand board feet; is that it?

A. Yes.

Q. Last week, Mr. Schultz, you testified regarding your investigations as to the possibility of disposing of lumber during the summer and fall of 1948 and up to the present time, I believe, and I questioned you as to what investigations you had made for disposing of lumber [668] through British Columbia. Do you remember your testimony in that regard? A. I think I do.

Q. Are you still of the same opinion, that your testimony was correct at that time?

Mr. Andersen: I will object to that as simply calling for a conclusion.

The Court: As I interpret it, it is only preliminary. I expect there is some change in the testimony; otherwise, it is merely repetition.

A. I believe at that time I testified that we had only investigated the port of Prince Rupert in

(Testimony of Freeman Schultz.)

British Columbia, and actually we investigated Vancouver, too.

Mr. Andersen: I want to interpose my previous objection, too, that it was hearsay. The objection was that it was hearsay and the same objection now, may it please the Court. He refers to this investigation we discussed last Friday.

The Court: Objection overruled.

Q. Did you investigate the possibility of unloading at Vancouver? A. Yes.

Q. Why have you now remembered this when you did not know about it before?

A. Well, Vancouver has not been a desirable outlet from [669] previous reports. We didn't pay much attention to it. At this time now it is not available to us.

Q. Did you make an investigation as to whether it has been available since the strike?

A. Yes.

Q. What——

Mr. Andersen: I object. The same objection.

The Court: The thing is, if they could use it as an outlet, rather than if it is available.

A. I was told the longshoremen would not unload our barges.

Mr. Andersen: I object to that as hearsay.

The Court: Unless connected with one of the defendants it would be hearsay.

Mr. Banfield: It should be stricken.

The Court: It will be stricken then.

(Testimony of Freeman Schultz.)

Q. Do you know whether it could be used as a port through which you could ship lumber?

A. It could not be.

Mr. Andersen: I object.

The Court: Objection overruled.

A. The longshoremen would not unload the barges.

Mr. Andersen: I object. The same objection.

The Court: Objection sustained.

Q. I asked if you knew? A. Yes. [670]

Mr. Andersen: Obviously, if the Court please, the answer calls for hearsay.

The Court: Yes. The important thing is whether or not they could use that port or did use it, not so much what led him to that conclusion.

Q. Mr. Schultz, as the result of this picketing and the other actions of the Longshoremen's Unions which have been described here, if you should start up the mill now, would there be any damages ensue hereafter?

Mr. Andersen: I object to that as purely speculative.

The Court: I don't understand. Repeat the question.

Court Reporter: "Mr. Schultz, as the result of this picketing and the other actions of the Longshoremen's Unions which have been described here, if you should start up the mill now, would there be any damages ensue hereafter?"

The Court: I think you should direct his atten-

(Testimony of Freeman Schultz.)

tion to something specifically if you ask it in that form, rather than permitting the witness to——

Mr. Banfield: I will withdraw the question.

Q. Have your markets and customers been affected by this strike?

Mr. Andersen: Same objection—speculation, hearsay and opinion.

The Court: Objection overruled.

A. Yes. [671]

Q. Explain that.

A. We have lost our customers.

Mr. Andersen: I move that be stricken, may it please the Court, for reasons heretofore mentioned.

The Court: I think it is a matter of knowledge on his part. Objection overruled.

Q. Mr. Prawitz testified he acted as an agent, his company was a commission agent for the Juneau Spruce. Are they willing to continue that relationship? A. Yes.

Q. Dant & Russell bought some of your lumber in stock at prices agreeable to the Juneau Spruce Corporation, is that the arrangement in effect there? A. Right.

Mr. Andersen: That calls for a conclusion.

Q. In what way then are your markets affected?

A. The customers that they had have been supplied from other sources, and now we will have to go back and show the advantages of our lumber as compared to lumber they have been buying.

Q. Were your shipments through Dant & Russell miscellaneous or special orders?

(Testimony of Freeman Schultz.)

A. Special orders or cut to specifications.

Q. Have your retail yards in Anchorage and Fairbanks been affected? [672] A. Yes.

Q. In what way?

A. We have not been able to supply them with all the lumber that they could sell.

Q. Is that due to this strike?

A. That is right.

Q. Do you know how much business was lost?

Mr. Andersen: I assume my objection runs to this as speculative, hearsay and opinion?

The Court: Objection overruled.

Mr. Andersen: I don't want to make an objection each time. May this objection run?

The Court: The record may so show.

Q. Are there any other items of damage of that nature?

A. We have lost a lot of our key personnel that will necessarily have to be trained.

Mr. Andersen: It is not responsive. I move it be stricken.

Mr. Banfield: We think it is, your Honor, a proper question and a proper answer.

The Court: Yes. Objection overruled.

Q. Has the lumber which you have had on hand during 1948—I am now speaking of the lumber which you still have on hand—has that been affected by this strike? A. Yes. [673]

Q. In what way?

A. Some is bowed, cupped, twisted, shaked, stained.

(Testimony of Freeman Schultz.)

Q. What do you mean by "shaked"?

Mr. Andersen: I object to that. It is not within the allegations of the complaint.

The Court: I am looking at your complaint. Do you contend it is within the allegations of the complaint?

Mr. Banfield: I think we have to show what damages occurred and we will have to show just what damages we are claiming and what damages we are not claiming. This witness testified he is unable to ascertain the exact amount of damages, and our intention—we are not asking for specific damages.

Mr. Andersen: If he is not asking, it is immaterial.

The Court: I think so too. If you are not asking, there is no purpose in going into it then.

Mr. Banfield: We are differentiating. We are going to show—we are asking only for what is definite and certain.

The Court: If anybody wants to differentiate it, let the defense differentiate it, if they think it is too general, but on your case I don't think it is necessary to go into that.

Mr. Banfield: Is your Honor waiting for a question or have you ruled on that?

The Court: If that is the only purpose—— [674]

Mr. Banfield: That is the only purpose.

The Court: I think the objection will have to be sustained to it then.

Q. Mr. Schultz, would it be practical or possible

(Testimony of Freeman Schultz.)

for the Juneau Spruce Company to ship to any port beyond Puget Sound? A. No.

Q. Why is that?

Mr. Andersen: May it please the Court, I don't believe we are concerned here with probabilities or possible practicalities. It is completely immaterial.

The Court: I think it would be relevant on a question of mitigation. Objection overruled.

A. There is machinery and equipment in Puget Sound to finish our product. It leaves here in a green state. There is machinery there to finish that. If we use our own equipment to tow it someplace—it is not ocean-going equipment——

Q. Could you insure for ocean-going?

Mr. Andersen: That is not material here.

The Court: If it limits their markets and hence increases their damages it would be relevant.

Mr. Andersen: I don't see on what basis—if it could be insured, that it would have anything to do with this complaint. [675]

The Court: If it limits their markets, and it is relevant I think on the question of damages. Objection overruled.

Q. Is the clear spruce and the shop grade lumber shipped from Juneau a finished product?

A. Not when it leaves here.

Q. What must be done to it before it can be used?

A. It is cut to sizes suitable for making doors, cabinets—it is kilned and has to be dried before it can be used.

(Testimony of Freeman Schultz.)

Q. Could you dry it here and ship it down there?

A. Yes, we could dry it here and ship it down there, but wood has an affinity for water and we have to ship it, and then it would be useless and we would have to go through the process down there.

Q. To sell in the eastern markets, shop and clears have to go through a finishing process?

A. The same way.

Q. Is that done on the East Coast?

A. Not to a great extent. It is done some in the Mississippi Valley, but not very much.

Q. Now, the common grades that you have described, where can you sell those?

A. Most anyplace that a house is being built.

Q. Are they finished when they leave here?

A. Yes. [676]

Q. Ready for use then?

A. They are ready for use.

Q. Where would you ordinarily dispose of your common grades of lumber?

Mr. Andersen: I think this line of questioning also is immaterial, may it please the Court.

The Court: Objection overruled.

A. First to our retail yards in Alaska and then to the markets in Oregon and California.

Mr. Banfield: If the court please, I believe there was some discussion before as to whether it was relevant to show the plans of this Company in the commencement of the operation season in 1948. I

(Testimony of Freeman Schultz.)

am not speaking now of a long range plan and what they intended to do that year. It is our contention if they operated they would be entitled to damages. I would like to ask the witness a question on that. I think the Court, under slightly different circumstances, stated that plans, etc., were not admissible. I think I would like to show the intention for that first.

The Court: You mean beyond showing that you were going to operate in 1948?

Mr. Banfield: No, I intend to show they did intend to operate for 1948.

The Court: I don't think any ruling of mine excluded that. You may go into that. [677]

Mr. Andersen: I object.

Q. Do you know what the plans were for operating the plant in 1948? A. Yes.

Q. What plans did you have?

A. To cut all the lumber we could cut.

Q. How much did you figure you could and would cut?

A. In excess of fifty million.

Mr. Andersen: I object to that as a conclusion.

The Court: Objection overruled.

Q. That would be fifty million board feet?

A. Board feet.

Q. Could that have been done with the equipment which was installed there and in the condition in which it was installed there at the time you arrived here in 1948?

(Testimony of Freeman Schultz.)

Mr. Andersen: Same objection.

The Court: Objection overruled.

A. Yes.

Mr. Banfield: You may cross-examine.

Cross-Examination

By Mr. Andersen:

Q. I understand, Mr. Schultz, that you first came here in January, 1947, and then apparently moved up here in June of 1948? [678]

A. That is right.

Q. And I assume that between those two dates you weren't here. Were you in Portland?

A. No.

Q. Where were you between those two dates?

A. I lived in Coos Bay.

Q. At that time you were an employee of the Coos Bay Lumber Company, is that right?

A. That is right.

Q. Between those two dates you weren't here. I believe you testified that you put some money into this Company also?

A. That is right.

Q. Who are the principal stockholders of this Company?

A. Gene Card that testified here is a stockholder. Stanley Johnson is our mill foreman, is a stockholder. D. D. Dashney, Coos Bay Lumber Company; J. W. Forester; Jens Jorgenson; Arthur Christianson; E. M. Boley; Mr. Chaney, Coos Bay

(Testimony of Freeman Schultz.)

Lumber Company; Dant & Russell and Paul Murphy; that will cover it.

Q. I assume from what you say only two of you live here. The rest, I assume, live in Oregon someplace?

A. Practically all of them live in Oregon, most of them in Coos Bay—workers in the mill, the same as I do.

Q. Does Mr. Chaney live in Portland?

A. He lived in Portland. [679]

Q. When you came up in January, made a survey and found the mill to be not necessarily held together by haywire, but in bad shape——

A. That is right.

Q. Not necessarily haywire?

A. Some haywire, and one horse.

Q. In pretty bad shape?

A. Yes, that is right.

Q. You used the word "prudently" when you talked about the expenditure of money. You bought equipment and bought a tub and whatever you thought necessary in order to operate this business, is that right?

A. That is right.

Q. I assume you are the person who decided what was to be spent or made recommendations?

A. No, sir.

Q. Who did? A. Mr. Hawkins.

Q. Did you also?

A. As a member of the Board of Directors, those subjects came up.

(Testimony of Freeman Schultz.)

Q. I thought I understood you to say originally, you originally determined the policy of the Company with respect to expansion and equipment? I may be in error.

A. As I remember, I said I participated—I didn't actually [680] determine it.

Q. This is preliminary. Whatever was spent you agreed to it? Some couple hundred thousand dollars was spent?

A. Right; as the Board would know in Coos Bay of the business being done here.

Q. About how much money was spent?

A. On repairs?

Q. Repairs and improvements, to get rid of the haywire.

A. Approximately one million and a quarter dollars.

Q. Altogether? A. Altogether.

Q. And I understand from what you say your idea was to get into production?

A. On a steady sustained production.

Q. You, of course, didn't want to let the expenditure of any amount of money necessary for operating the mill to stand in the way of operating the mill? Any improvements you felt necessary you did? A. That is right.

Q. And any amount of money you felt necessary to spend so the mill would operate without trouble you spent?

A. Not necessarily any amount.

(Testimony of Freeman Schultz.)

Q. You mentioned over a million dollars?

A. That is right.

Q. With respect to all that money, doesn't what I say hold [681] true?

A. There were some strings attached. It was not just like water flowing.

Q. I don't like to throw money away. I would assume you are the same type of person?

A. We hollered about it.

Q. You didn't waste it?

A. We didn't waste it.

Q. You tried, as you said on direct examination—you tried to spend, not necessarily frugally, but certainly prudently?

A. That is right.

Q. And as you sized up the situation here, what you decided to try and do was do everything reasonable in relation to the situation as you saw it to get the mill into efficient operating order?

A. That is right.

Q. There is no qualification to that at all, is there? A. No; no qualification.

Q. That applied particularly to the physical improvement of the mill, did it not? A. Yes.

Q. And, of course, also applied or should have applied, to all other aspects of the lumber operation?

A. The plant site as well as the physical properties of the [682] mill.

Q. Personnel, logging camps——

A. That is right.

(Testimony of Freeman Schultz.)

Q. And even the green chain?

A. Even the green chain.

Q. And I think you used the word "reasonable" —I use the word "reasonable" in the sense that you certainly would not, as operating Manager of this mill, condone the unnecessary expenditure of money to do something not required, nor would you condone not spending some money which the mill should spend for a really efficient operation?

A. If within my knowledge; that is true.

Q. Of course, for efficient operation firms have to spend, at one time or another, spend a little more money than is cut out?

A. That is right.

Q. In the operation of big industry, and this is a big industry, isn't it? A. No.

Q. We will say it is a fair-sized mill.

A. That is right.

Q. And what I have said applies to that also—in the expenditure of money you certainly don't condone—that is the wasteful expenditure of money —but insist that anything [683] reasonable, so far as operation of the mill is concerned, be done. That is true, isn't it? A. That is right.

Q. From what you said I assume you sell a great deal of lumber on contracts?

A. I don't understand what you mean by "contracts."

Q. Don't you have orders?

A. Yes, definite orders.

(Testimony of Freeman Schultz.)

Q. Definite orders are, of course, contracts, aren't they?

A. I didn't understand what you meant by "contracts."

Q. Well, aren't they? A. Yes.

Q. If you get an order from Black mill for so many feet of lumber and an order from Gray mill for so many feet of lumber, do you ever interchange orders? Suppose Black mill says, "Sell that to Gray Mill"?

A. No. We will ship to Gray mill, but Gray mill will pay for it. There is no trading of lumber.

Q. The order from Black mill is shipped to Gray mill and Black mill says, "We will get the money from them and pay you." That is your understanding?

A. We will buy lumber. We will sell lumber. There is no trading in behind.

Q. What do you mean, "trading"?

A. We won't say to Gray mill, "We need one hundred thousand [684] feet at Anchorage and we will trade you for someplace else."

Q. Suppose you have an order from Black mill and Gray mill phones in and says, "It is o.k. with use to ship it to Black." Do you ever do that?

A. Yes.

Q. You spent quite a length of time improving the mill, didn't you? A. Yes.

Q. Over-how long a period of time?

A. What period are you talking about?

(Testimony of Freeman Schultz.)

Q. The time you first came up.

A. There was no period of repairs at that time.

Q. When did you start to repair it?

A. After the mill shut down in the winter of 1947-1948.

Q. Did you do normal repairs?

A. Normal operating repairs, of course, as the mill was going along.

Q. I assume sometime in April you started doing more repairs and improvement?

A. I don't understand.

Q. It is safer to say you don't understand. When you came in January you found what we both characterized as a haywire mill.

A. Yes. [685]

Q. You appraised it?

A. And turned in a report.

Q. You appraised it as to value? A. No.

Q. What did you appraise?

A. As to the plant site, the type of machinery and equipment here.

Q. And you, in other words, made what would be called an operating survey rather than a purchase survey? A. That is right.

Q. Have you ever made a purchase survey?

A. No. I have made this same type of survey at least eight or ten times.

Q. An operating survey? A. Right.

Q. I mean a purchase survey—we will say inventory and machinery not site value. You didn't do that here? A. No.

(Testimony of Freeman Schultz.)

Q. Do you know if anybody did that, if anybody?

A. After I was up and looked it over Mr. Chaney was up and looked the property over and Mr. Dashney and Mr. Boley looked the property over.

Q. Did I understand Mr. Hawkins made a value survey? A. No.

Q. He didn't? [686] A. No.

Q. When was this corporation formed?

A. When the property was taken over.

Q. And that was sometime, probably the first of 1947?

A. That is right, formed for that purpose.

Q. It wasn't Mr. Hawkins who made a valuation survey of the property?

A. He didn't say how much was sawmill value and——

Q. It wasn't he who did it? A. No.

Q. One of these other gentlemen?

A. That is right. It was an accounting problem.

Q. How many meetings did you have altogether with the longshoremen here? A. One.

Q. That was when?

A. When Mr. Albright and Mr. Pearson came to my office.

Q. That is the only meeting you had?

A. That is the only meeting.

Q. That is the meeting where they went to you to negotiate a contract?

(Testimony of Freeman Schultz.)

A. That is right.

Q. And the meeting lasted a couple minutes or so?

A. No, I would say we were there about an hour or maybe longer.

Q. And you, of course, refused to negotiate with them at that [687] time?

A. I am not sure just what you mean by "negotiating." We talked.

Q. Let's not have any argument over that word. "Negotiate" isn't "arbitrate"; it isn't "conciliate." "Negotiate" means where they talk among themselves and try to reach an agreement between themselves, some ultimate aim or desire. You understood it when the longshoremen went down to talk to you? By the way, when was it?

A. I would say the middle of November, 1948.

Q. I had here in October.

A. It could be.

Q. In other words, they went down to talk to you about negotiating a contract with them, that is, Local 16, for the longshore work. Isn't that the essence of it? A. That was the purpose.

Q. That was the essence of it, and there was no negotiation; isn't that true, sir?

A. No; we negotiated. We talked. We didn't arrive at a conclusion.

Q. You took the position you had nothing to negotiate, isn't that true?

A. No. We suggested to them the Woodwork-

(Testimony of Freeman Schultz.)

ers and Longshoremen get together. They are the ones that had the disagreement.

Q. That meeting was when? [688]

A. 1948.

Q. You suggested they get together?

A. Yes.

Q. In October, 1948, you told the longshoremen, "Get together with the Woodworkers and whatever is agreeable with the Woodworkers is agreeable to us."

A. No. If they made a plan and that was agreeable, I would carry it on to headquarters.

Q. You suggested to the longshoremen, the Woodworkers not being present——

A. They were.

Q. The Woodworkers being present at the meeting, or having a representative there, that they hold a meeting among themselves and thereafter come back to you?

A. If they could get together.

Q. Implicit in that was that if they could get together it would be all right with you?

A. I would recommend to the Board of Directors of our Company.

Q. You would recommend to the Board, you would accept anything worked out between them?

A. Not anything.

Q. Any reasonable thing?

A. That is right.

Q. The word "reasonable" covers a lot. That was in your mind? [689] A. Yes.

(Testimony of Freeman Schultz.)

Q. That was the view of the mill as expressed by you in October of 1948?

A. That is right.

Q. Didn't you tell them in that meeting you would not negotiate with them at all about longshore work?

A. No, I didn't tell them that.

Q. Didn't you tell them at that time that it was sort of a necessary condition that they first get together with the I.W.A. before you would talk to them? A. That is right.

Mr. Andersen: That is all.

Redirect Examination

By Mr. Banfield:

Q. Mr. Schultz, is Mr. Hawkins also a stockholder? A. Yes.

Q. Mr. Schultz, Mr. Andersen asked you several questions at one time there, sort of stringing out his question, and ended up by asking you how much money you spent in getting rid of the "haywire." Your answer was a million and two hundred and fifty thousand dollars.

A. I didn't understand it, that it was entirely getting rid of the haywire.

Mr. Andersen: I didn't mean it in that way.

A. It was plant and equipment altogether.

Q. And purchase of logging equipment?

A. And improvements down at the plant.

Q. And purchase of land?

(Testimony of Freeman Schultz.)

A. And purchase of land. In one lump sum, as I understood his question.

Q. Do you know how much money the Company has in this Company now?

A. In excess of two million dollars.

Mr. Strayer: Your Honor please, counsel questioned Mr. Schultz regarding the trading of orders. We thought it was preliminary and didn't object. He didn't pursue it. If he claims anything for it I think we are entitled to know what it is so we can examine this witness further, otherwise it should be stricken.

Mr. Andersen: Well, if an objection to that line of questioning was in order, the objection should have been made at the time. There was no objection.

The Court: This isn't an objection to it. This is a motion to strike unless the materiality is shown.

Mr. Andersen: I think the materiality shows very clearly. I think he probably sees the same thing I do, I might so state to the Court.

Mr. Strayer: I see no materiality at all.

The Court: I am in the same state of mind as counsel. [691]

Mr. Andersen: I will tell your Honor the purpose. This is going to be an argument. I will state it very briefly, though I think it is unfair. Mr. Schultz, on the witness stand—I can't quote the record verbatim—but in substance he testified that sometimes he would have an order from Black Company and the lumber will be shipped to the

(Testimony of Freeman Schultz.)

Green Company. That is a contract, as he testified, and lumber ordered by Black Company and not Green Company, and Green and Black Company adjusted the payments themselves. That is what he testified to. If we change that to I.W.A. and Local 16 we have the same situation. They have a contract with Black Company to sell the lumber and he sends the lumber to the Green company. Earlier he testified they had a contract with I.W.A., which will be Black Company. Black Company said, "Let Green Company have it." Mr. Hawkins said that I.W.A. said, "Let Local 16 have it." What he can do with Black Company and White Company he can do with I.W.A. and Local 16. I brought that out simply as a parallel, your Honor.

The Court: The motion to strike is granted. That testimony is stricken.

(Witness excused.) [692]

MARC S. BOLES

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. State your name.

A. Marc S. Boles.

Q. What is your occupation?

A. I am accountant for the Juneau Spruce Corporation.

(Testimony of Marc S. Boles.)

Q. How long have you been employed by the Juneau Spruce Corporation?

A. Since April 1, 1948.

Q. And have you been stationed here at Juneau all that time?

A. I was employed on the first. I didn't arrive in Juneau until the sixteenth.

Q. What qualifications do you have for this position?

A. I am a graduate of the University of Idaho. I majored in accounting. Since that time I have been doing nothing but accounting work. I have passed the Certified Public Accountant's examination and I am a Certified Public Accountant for the State of Oregon.

Q. And how much practical experience do you have in bookkeeping and auditing?

A. Eight years.

Q. Do you have with you a financial statement of the Juneau [693] Spruce Corporation?

A. Yes, I do have.

Q. And for what period has that been prepared?

A. For the fiscal year ended March 31, 1949.

Q. What is the fiscal year of the corporation?

A. From April the first to March 31 the succeeding year.

Mr. Banfield: If the Court please, I would like to have this statement marked for identification.

The Court: You are not going to offer it?

Mr. Banfield: We will offer it by this witness

(Testimony of Marc S. Boles.)

later. It is just in order as we go along——

The Court: An exhibit is marked for identification only when it is intended to offer it by some other person.

Mr. Banfield: Then we won't.

Q. Mr. Boles, will you identify page one of that exhibit?

A. Page one is the balance sheet or assets side of the balance sheet of the Company. I have March 31 of 1949 and 1948.

Mr. Andersen: I would like to interpose my general objection as far as the International is concerned to the testimony of Mr. Schultz.

The Court: You may make such an objection. The ruling is the same.

Mr. Andersen: And to this witness' testimony, as far as the International is concerned, and plus the additional [694] objection that it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Q. Mr. Boles, on this financial statement you have an item here of inventory "Logs in Booms." Will you tell us the basis of value of the logs?

A. Those logs are valued at $23 a thousand. If you look at page thirteen of this exhibit you will find a complete statement of the footage and of the valuation per thousand log scale feet.

Mr. Andersen: In the interest of time, I fail to see the materiality of going into all the assets of the Company. We have already had two wit-

(Testimony of Marc S. Boles.)

nesses testify to the Company—Mr. Schultz just testified to the assets of the Company. I don't see that they have to break it down.

The Court: It doesn't seem necessary to take it item by item.

Mr. Banfield: Only those concerning which there might be some question, in arriving at the value. In other words, if there is any discrepancy between the market value and the book value, we put them in and explain them, or it might be somewhat misleading. This whole balance sheet—not so particularly in this—but it will substantiate the profit and loss. We are not going over it item by item, but only those concerning which there might be some question.

Mr. Andersen: I don't see why they have to go over [695] the balance sheet. They have testified. This will consume a day.

Mr. Banfield: No, it wouldn't.

Mr. Andersen: If it is twenty minutes it is too much. I just said it is not material.

Mr. Banfield: The balance sheet is not, your Honor, but the profit and loss is. This is tied in together.

The Court: You have already shown what you claim the losses are that were incurred.

Mr. Banfield: I am sorry, your Honor. We haven't.

The Court: You haven't?

Mr. Banfield: No. In the opening statement

(Testimony of Marc S. Boles.)

we have stated what it would be. We haven't shown it.

The Court: There is no use going over item by item what the exhibit shows.

Mr. Banfield: No; I am not going to.

The Court: Make it as brief as possible. You may proceed.

Q. What is the basis of the value of the lumber listed in the inventories?

A. It is valued at market prices f.o.b. Juneau.

Q. What is the total investment of the Company as of March 31, 1949, as shown on this balance sheet?

Mr. Andersen: I object to that as incompetent, irrelevant, immaterial and he has already asked that. [696]

The Court: Objection overruled.

A. We had outstanding capital stock $1,450,000 in addition to which we had a bank loan the total of which was $760,000.

Q. What is the total assets as shown by this exhibit? A. $1,823,986.50.

Q. Now, is this balance sheet based on the entire operation of the Company or just the sawmill?

A. It is based on the entire operation.

Q. Would it include the items in the retail yards? A. It would.

Q. Will you identify page four A.

A. Page four A is the manufacturing and overhead cost summary of the Company for the year ended March 31, 1949.

(Testimony of Marc S. Boles.)

Q. And does that summary show the profit and loss of the sawmill operation at Juneau?

A. It does.

Q. And what is the amount of profit or loss for this period? A. $558,440.07 loss.

Q. Would there be a different profit and loss if you were to take into account your retail yards?

A. Yes, there would.

Q. Where is that reflected?

A. Page six of this exhibit, the profit and loss summary.

Q. And in what way would it differ? [697]

A. The retail yards of the Company made money during the last fiscal year. In order to consolidate our net profit or loss, the profits from retail yards are deducted from loss in the sawmill operation.

Q. What phase of the Company's activities are included in the profit and loss statement, Exhibit 4A, which shows a loss of five hundred and fifty eight thousand and some odd dollars?

A. The logging and sawmill operations of the Company, with the exception of the box factory.

Q. Do you have a separate exhibit showing the profit and loss of the operation of the box factory?

A. That is detailed on page five of this exhibit.

Q. I call your attention to Exhibit 3A and ask you—there is an item there stated as an expense for logging operations of towing rafts, $66,814.08. Will you explain what you mean there by towing rafts?

A. That is the expense incurred by our tow-

(Testimony of Marc S. Boles.)

boats as detailed on page 14F of this report for the last fiscal year.

Q. In other words, that is the total expense of operating the boats? A. That is correct.

Q. Does that include depreciation of them?

A. Yes.

Q. Not necessarily just the expense of towing rafts? [698] A. No.

Q. Had they been put to other use during this period?

A. We tried to find all the work we could to limit the loss as much as possible.

Q. Have you found other work for them?

A. Some.

Q. How much was received from the operation of the boats? A. $22,179.04.

Q. The next item on page 3, on this page, is Logging Depreciation, $59,600. Will you explain what this is?

A. That is depreciation on our equipment at the Edna Bay camp, yarders, caterpillars, road building equipment, fire fighting equipment and all other miscellaneous equipment at the logging camp, to operate efficiently.

Q. On the profit and loss statement as shown on page 4A and as shown on page 6, have you included the income from these boats as income of the sawmill operation?

A. It has been so included.

(Testimony of Marc S. Boles.)

Q. And you deducted the expense from the total income? A. True.

Q. And deducted depreciation from your income? A. That is true.

Q. This appears to be a statement which includes not only the year but the month of March. Can you explain that?

A. This is our usual financial statement which we prepare [699] each month for submission to the Board of Directors, and we use this final in each month to give the complete picture for the entire year.

Q. In other words, it shows everything during the month of March, and in addition, accumulation of everything for the year? A. Yes.

Q. One being in one column and the other being in the other column? A. Yes, sir.

Q. Now referring to page six of the financial statement you show here "Net Loss Juneau Sawmill and Logging Camp-Above" $522,314 and some credits against that at the bottom of the page. Will you explain that?

A. We incurred certain expenditures during last winter which led to improvement. There were repairs to the sawmill from November 1 to March 31. We moved the big retail shed from the center of the yard, too, and built a fence completely around the property. We replaced rotten dock with rock fill, $27,493.55 having been eliminated from our recorded loss for the year.

(Testimony of Marc S. Boles.)

Q. Valuing that against the loss, what is the final resulting loss to the Company from its sawmill and box factory operation?

A. $524,821.37. [700]

Q. What standards have you used in the preparation of this financial statement, balance sheets, profit and loss statements, etc.?

A. It is prepared in accordance with generally accepted accounting and auditing principles and procedures and I used all the items and principles needed to properly present this statement.

Q. Turing to page seventeen—no, I am sorry, I got the wrong reference here—does this statement here reflect the actual loss of the Company for the period? A. It does.

Q. And what was included in income in preparing this profit and loss statement, what items did you include in the income?

A. All sales of the Company and other miscellaneous receipts as recorded through the year.

Q. I would like to have you answer that again and explain what sales.

A. I included all sales of the Company to outsiders, as well as transfers to our own retail yards, as income to the sawmill operation.

Q. You transferred to the retail yards at what value? How much would be charged to the retail yard and be credited to the account of the sawmill?

A. We charged our own retail yards the net sale price [701] we would realize on a sale to any other person.

(Testimony of Marc S. Boles.)

Q. And what in the income did you include besides sales?

A. A small amount of miscellaneous receipts from rentals of our houses in Douglas and from miscellaneous equipment which we rented, principally one yarder.

Q. In other words, your receipts consisted of sales and these miscellaneous amounts?

A. Right.

Q. An income from towing boats?

A. That was included.

Q. Generally speaking, what did your deductions from income consist of?

A. I am sorry; I don't follow your question.

Q. On your profit and loss statement you have shown expenes, deductions from income. What were the expenses, broadly speaking, as reflected in this statement? Does it consist of the operation of the sawmill or what does it consist of?

A. Are you referring to the deductions on page six?

Q. Yes; on page six, where you show the receipts of the Company, then you show expenses incurred which may lead to some amount of permanent improvement.

A. That was the expense which we incurred in making repairs to our sawmill from November 1, 1948, to March 31, 1949, the labor and material of which was $18,191.26. We moved [702] the big retail shed. That cost——

(Testimony of Marc S. Boles.)

Q. I am sorry, that isn't what I meant to get at. I mislead you there. Turning to page 3A and 4A, I want you to summarize for the Court and jury here just what these expenses consisted of that you have deducted from income in order to arrive at this loss.

A. Principally depreciation, insurance costs and the cost of maintaining watchmen and the cost of maintaining the men whom we—or whom we knew we had to keep if we ever hoped to get logging and sawmill operation going again.

Q. All the men who are working are included?

A. Yes.

Q. How many watchmen are there?

A. At present five.

Q. Does it include the logging camp expenses?

A. It does.

Q. Do you have to have personnel down there now? A. Yes.

Q. How many?

A. At the present time four men.

Q. What do they do?

A. Two men are there principally as watchmen. We have two men there now who are cleaning up our logging equipment, trying to repair the damages which the last year's idleness [703] has caused them.

Q. These watchmen—why do you have to have two watchmen there?

A. It is extremely dangerous to leave one man in an isolated spot. If something happened the other one could get help.

(Testimony of Marc S. Boles.)

Q. Do you have a time-clock punching system?

A. Not at the logging camp.

Q. Do you at the mill? A. We do.

Q. Do these expenses include the expense of operating the mill from July until October?

A. They do.

Q. Has the lumber or the money received from the sale of lumber produced last summer, has that been credited in this profit and loss statement?

A. It has.

Mr. Banfield: We will offer the financial statement in evidence, your Honor.

Mr. Andersen: The same objection, may it please the Court.

The Court: Objection overruled.

(Whereupon the exhibit was admitted and marked Plaintiff's Exhibit No. 14.)

Q. Mr. Boles, have you prepared anything to show the amount of profit and loss which the Company would have had, had [704] it operated this mill? A. I have.

Q. Do you—how many copies do you have here of that?

Mr. Andersen: Am I to understand there will be more testimony such as Mr. Prawitz gave?

Mr. Banfield: No.

Mr. Andersen: Isn't this the same exhibit?

Mr. Banfield: Mr. Prawitz testified to page seventeen of this exhibit and also one other witness testified regarding page eighteen.

(Testimony of Marc S. Boles.)

Q. Mr. Boles, for the purpose of the record here, will you briefly state what this document is that you now have and which we are discussing?

A. This exhibit is a complete statement of what the Company should have made had the Company been allowed to operate during the fiscal year April 1, 1948, to March 31, 1949.

Mr. Andersen: I move the answer be stricken, may it please the Court. This is a new line of questioning. I want to interpose the same objection. It is incompetent, irrelevant and immaterial, so far as the allegations of this complaint are concerned.

The Court: Objection overruled.

Q. In order that we can more logically follow your testimony later, Mr. Boles, will you state briefly how you went about the process of developing what this profit and loss [705] would have been if the Company had operated.

A. The first problems in the order in which they appear in this schedule——

Q. Excuse me. I believe if you started with seventeen and eighteen and then went back to No. one, I think it would be better.

Mr. Andersen: Regarding Exhibit seventeen which Mr. Prawitz testified about, I am going to object that it has been asked and answered. Unless Mr. Banfield tells me how many witnesses he is going to have——

Mr. Banfield: Mr. Prawitz testified on one question that was how much lumber would have been

(Testimony of Marc S. Boles.)

sold. This witness doesn't know anything about that.

Q. Will you explain page seventeen and eighteen.

A. Page seventeen and eighteen are the amount of production in terms of thousand board feet by grade, by description and by species which the Company would have had, had it have operated.

Q. How did you determine that?

Mr. Andersen: May it please the Court, I want to make another objection. This witness, as I understand, is allegedly testifying as an expert. He isn't on the selling end of this business. He is an accountant, and when he says "would have sold" I assume somebody told him they would have sold it. I don't want to accept this man's understanding, or [706] want him to testify on the figures, or I will have to be objecting to all of it as conclusions of the witness.

The Court: As keeper of the accounts, wouldn't he know.

Mr. Andersen: What was, but not what would have been sold.

Mr. Banfield: I am talking about species and grades.

Mr. Andersen: And what may have been sold, as I understood the question. May we have the Reporter read the question?

The Court: I understand that. There has been testimony in this case as to the amount of lumber

(Testimony of Marc S. Boles.)

that could have been produced and could have been sold. This witness is going to testify, as I understand it, to the breakdown.

Mr. Andersen: If he is just testifying to the breakdown——

The Court: Is the purpose to show anything else?

Mr. Banfield: If counsel will turn to page seventeen he will plainly see. If the Court please, this does not deal with volume, but with grades and how they are ascertained for any volume, if it is one hundred thousand or one hundred million. What I am asking the witness is how he determined in what grades the lumber produced would fall, regardless of the quantity.

The Court: Is it a breakdown of the lumber production? [707]

Mr. Banfield: Yes.

The Court: Objection overruled.

Mr. Andersen: Is the understanding that the witness can testify from figures but not what would have been done, so far as he personally is concerned?

The Court: That is what I understand.

Q. How did you arrive at these breakdowns, sizes, grades, species and quality typing of lumber?

A. We completely tallied or analyzed the lumber by grade, by species, by the type that was pulled from our sorting table during the month of August, 1948. Inasmuch as that lumber was pulled by shop, by clear, by common, in order to determine what

(Testimony of Marc S. Boles.)

classifications they would have fallen into within the major grades, we completely analyzed our shipments for the year 1947 and determined what percentage of each of these types of lumber would have been produced.

Q. On this page seventeen there appears here one row of percentages indicating that 15.54 per cent of your lumber would be spruce, 4.9 per cent would be hemlock, etc. Is that what was determined from the green chain pull?

A. That is correct.

Q. As indicated on the same page, it is shown that clear spruce, five by four by six and wider, vertical grain, B and better, would be 1.56 per cent, and the two by six and wider vertical grain, B and better clear spruce, would [708] be 5.14 per cent of the total spruce. Is that correct?

A. That is correct.

Q. And going on with the other sizes the same way?

A. Yes, sir.

Q. Now what values did you assign to the production of each specific type of lumber? Where did you get your values to use in determining the value of the lumber produced in each one of these sizes and grades?

A. You mean total amounts?

Q. No. How did you determine at what price to sell rustic siding?

A. That information was furnished me by Mr. Prawitz.

(Testimony of Marc S. Boles.)

Q. If you will refer to page sixteen, which is a table of prices by grades as determined by Dant & Russell, I will ask you if you have one of those tables of prices before you?

A. There is one in this exhibit.

Q. I will show you here Plaintiff's Exhibit No. 13 marked for identification and ask you if that is the scale of lumber prices which you have used?

A. Those are the values we used in computing our total sales.

Q. Is that schedule introduced here marked for identification as Plaintiff's Exhibit 13, the same as this schedule which I have incorporated here in this full exhibit? A. It is. [709]

Mr. Banfield: If the Court please, for the purpose of this testimony here, I think this should be marked for identification, for identification in the record. What he has, Exhibit 13 for identification, is the same as page sixteen of this particular document.

The Court: If you are going to have him testify from more than one, you better.

Mr. Banfield: In this case there is a necessity which ordinarily doesn't exist.

The Court: Very well.

Mr. Banfield: I would like to have it marked for identification at this time.

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit 15 for identification. Just one sheet or the whole exhibit?

(Testimony of Marc S. Boles.)

Mr. Banfield: The whole exhibit, the whole thing, the whole document.

Q. Mr. Boles, is the document which is marked for identification as Plaintiff's Exhibit No. 13 identical with page sixteen of the document marked for identification Plaintiff's Exhibit 15?

A. It is.

Q. Now, Mr. Boles, I would like to show you here two pages which are marked for identification as Plaintiff's Exhibit 10. Are those two pages identical with pages seventeen [710] and eighteen of the document marked for identification as Plaintiff's Exhibit No. 15? A. They are.

Q. Now, Mr. Boles, did you apply the values as shown on page sixteen of the document marked for identification as Plaintiff's Exhibit No. 15 in accordance with the production month by month?

A. I did.

Q. Of the plant. In other words, you mean to say if a certain item were produced in a certain quantity during the month of October, that you took the price off of that page sixteen and multiplied it by production and considered that the selling price? A. I did.

Q. Now on page eighteen there is set forth here a distribution of lumber by grades and by ports, that it would have been shipped through, apparently. Will you explain what that is?

A. It is the distribution of how the Company would have shipped its lumber to the various ports for sale.

(Testimony of Marc S. Boles.)

Q. Now, here under the Puget Sound ports you have shown a distribution of lumber in the amount of seven hundred and twenty seven thousand feet for the months April, May, June, July, August, but none in September, October, November, December, January or February. Why was that? [711]

A. There was a general waterfront tie-up.

Q. What do you mean by "general waterfront tie-up"?

A. The Unions operating for the steamship companies were on strike. There were no steamers in port and it was absolutely impossible to ship by steamer.

Q. You mean to say what you have done here is work out where this lumber would have gone to?

A. That is correct.

Q. What is the purpose of that?

A. So we could determine our transportation costs.

Q. And where do you find those transportation costs in this document marked Plaintiff's Exhibit No. 15 for identification?

A. On page two of that document.

Q. Going back to page one of the same document, could you tell us what the total sales would have been in dollars and cents for the fiscal year 1948-1949? A. $3,063,821.91.

Q. I didn't quite get that.

A. $3,063,821.91.

Q. I believe that is set forth on page one and two is it not? A. That is correct.

(Testimony of Marc S. Boles.)

Q. Of this exhibit. Now, how did you go about determining the expenses which would have been incurred in the operation [712] of the plant during the fiscal year 1948 and 1949?

A. By referring to past records of the Company I determined what number of men would have been needed to operate that plant, determined how much it would cost for that man on that job per shift—we had so many operable shifts per month—that would give me my total payroll. Our logs would have cost us, approximately would have cost us $23 a thousand.

Q. On the basis of what production has this document been prepared, production of lumber?

A., 38,268,000 board feet.

Q. Now, what would be the total log consumption necessary to produce that much lumber? Is that set forth on one of these sheets?

A. It isn't.

Q. Is it set forth in any manner whatsoever or in total?

A. Not as to the log scale feet that we would have used.

Q. How did you determine the amount of logs you would have converted into lumber?

A. The Company can get five per cent overrun in running logs. They would know the board feet would be the resultant difference, in terms of board feet plus five per cent as overrun and would deter-

(Testimony of Marc S. Boles.)

mine the amount of lumber of logs in terms of log scale feet, they would have to buy.

Q. What do you mean by "overrun"? [713]

A. By careful cutting, the Company is able to get more lumber out of a log than the integral amount of lumber of that log, as the logs are scaled on log scaling rules.

Q. The Forest Service scale, and that term is "log scale" and that is what you buy, and when you produce you get more lumber out of it than what there is to begin with? A. Correct.

Q. Why is that?

A. The scale rule—suppose you get out of a log in terms of lumber exactly what the log scale would show, providing you cut it into one inch lumber. Where you cut the log into two inch lumber you save kerf in the amount cut.

Q. That is where you get the extra production, is it?

A. Out of the saw kerf and out of the table. Logs are graded on the small end and on the diameter.

Q. The overrun comes out of the butt and the flare? A. That is correct.

Q. Did you ascertain what these logs would cost? A. I did.

Q. And what was the value?

A. $23 a thousand.

Q. Did you determine what the cost would be to deliver to Juneau? A. I did.

(Testimony of Marc S. Boles.)

Q. Where is that set forth? [714]

A. On page three of this exhibit.

Q. You have here various items such as for the boat "Santrina" operating labor, operating supplies, fuel and oil, galley supplies, repair supplies and expense, insurance and depreciation. How did you determine how much operating labor would be used?

A. By referring to page nine of this exhibit, I beg your pardon, it is page twelve, you will see how many men were needed to operate that boat, the amounts we paid that man for that month's work, the total of which is the amount it would have cost us for operating labor for that boat.

and weeks the boat would run?

A. These boats primarily were used to tow logs to the mill. It was necessary to operate those boats to bring enough logs in to operate the mill for that year. If there is no need for logs to satisfy our demand for this year, the boats could be tied up.

Q. Is that why you show less men aboard in December, January and February?

A. Correct, and the weather at that time also precludes towing of logs.

Q. And the sawmill, box factory, power house, machine shop, planing mill, shipping department, etc., did you go through [715] those in the same manner to determine how many men would be on each job. A. I did.

(Testimony of Marc S. Boles.)

Q. What did you use as a basis for determining that?

A. The past records of the Company.

Q. You would have some items of expense like office supplies? How did you determine how much office supplies you would use in a year?

A. In those cases where we were unable to determine the exact amount, we would use month by month—I checked the previous records of the Company and found what information I could and then would set the figure for that particular type of expense at the point where I knew the Company could not possibly exceed that cost. That would be the cost.

Q. How far did you go in increasing expense?

A. I generally doubled them from our previous records.

Q. Would your previous records be adequate to give a fair determination for this fiscal year 1948-1949? A. They were a guide.

Q. What do you find the total expenses of operation of the Company would have been for the fiscal year 1948-1949? A. $1,857,672.73.

Q. Would that include the expenses of operating the retail yards? [716] A. It would not.

Q. What items of expense would it include?

A. The operating or cost of the sawmill, logging costs, and the box factory.

Q. How about selling?

A. It includes selling.

(Testimony of Marc S. Boles.)

Q. The cost of selling? A. Yes, sir.

Q. Does this exhibit marked for identification as Plaintiff's Exhibit 15 reflect all the income which you would have had had the mill operated during that period? A. It does.

Q. How did you determine the number of shifts that would have been operated by the Company?

A. By the total number of days in the months which were operable.

Q. What do you mean, "operable"?

A. By eliminating Sundays and holidays, it gave us the number of shifts that we normally would have operated.

Q. How many shifts did you use?

A. Two, until March, 1949.

Q. For what period would this—what period did you use in preparing this?

A. The fiscal year April 1, 1948, to March 31, 1949.

Q. What period did you cut out for winter shutdown? [717]

A. The period of November 20 to the first of March, 1949.

Q. Mr. Boles, you show here that you have used the period April 1, 1948, to March 31, and the strike did not occur until April 10. Why did you use April 1?

A. It is practically impossible to segregate a statement for a short term period of ten days.

Q. Are the books kept on a daily basis or a monthly basis?

(Testimony of Marc S. Boles.)

A. They are kept on a monthly basis.

Q. You have the figures in your books down there as to production during the first ten days of April? A. I do.

Q. What would that production run in logs?

A. In terms of logs, about ninety seven thousand feet per shift.

Q. Do you know whether or not on a production of that amount under the expense the Company was at that time, whether or not a profit would have been derived?

A. There very definitely would have been.

Q. Has that profit been permitted to enter into your figures here as a part of the income of the Company? A. Yes.

Q. Have you included in these statements any damages for such items as the effect the strike had on your retail yards? A. I have not. [718]

Q. Or any losses of market? A. No.

Q. Anything of that nature? A. No, sir.

Q. How certain are you, Mr. Boles, that these expenses which you have listed here are not too small?

Mr. Andersen: That calls for obvious speculation on the part of the witness. How certain he is—that is a conclusion.

Mr. Banfield: If the Court please, in a case of this kind we have to prove——

The Court: Objection overruled.

A. In all cases, where expenses are shown for

(Testimony of Marc S. Boles.)

this Company, there are far more—they are more than adequate to cover expenses the Company would have been put to in producing that lumber.

Q. You feel reasonably certain if you had operated your expenses would have been less than you show in Exhibit 15?

A. I am very certain.

Q. What would have been the net profit of the Company during the fiscal year April 1, 1948, to March 31, 1949, if the Company had operated and produced lumber and under the expenses which you have shown on this exhibit? A. $511,122.29.

Q. Now, Mr. Boles, have you examined the records of this [719] Company for the purpose of determining whether or not there were actually any members of the I.W.A. Local engaged in loading barges during the period April 1 to April 10, 1948?

A. I have.

Q. And how could you tell which men were members of I.W.A. and which were not?

A. We have the check-off list or the authorization from each of those employees for us to deduct from their wages and turn over to the Union the amount of their monthly dues.

Q. Their Union dues? A. Yes, sir.

Q. Were there many employees during the period April 1 to April 10, 1948, in the loading of Company barges with lumber who were members of Local I.W.A. M-271? A. There were.

Q. How many, do you know?

(Testimony of Marc S. Boles.)

A. Not off hand.

Q. What was it, to the best of your recollection?

A. About ten.

Q. Were there any more engaged in that work during that period who did not furnish you a check-off slip? A. Some, yes.

Q. Mr. Boles, referring to this exhibit marked for identification as Plaintiff's Exhibit No. 15, is this an accurate reflection of the amount of profit which would have been derived by the Company had it operated two shifts during the period indicated?

Mr. Andersen: The same objection, may it please the Court.

The Court: Objection overruled.

A. It is.

Q. Now, Mr. Boles, if you had prepared this statement for just the period April 10, 1948, to March 31, 1949, would it have shown the same amounts or greater or less than it shows now?

Mr. Andersen: I object.

The Court: Objection overruled.

A. It would have shown a smaller amount. Will you repeat your question, Mr. Banfield?

Q. If you had prepared Plaintiff's Exhibit No. 15 marked for identification on the basis of only April 10, 1948, to March 31, 1949, would it show more profit or less than what you have shown here?

A. It would show the same amount.

Q. You think it would show the same amount.

(Testimony of Marc S. Boles.)

Mr. Boles, Exhibit No. 14—has that been prepared for the whole fiscal year, April 1 to March 31?

A. It has.

Q. And if the exhibit marked Plaintiff's Exhibit 14 had been [721] prepared only for the period April 10, 1948, to March 31, 1949, would the loss of the Company in its operations have been any greater or any less by reason of leaving out those first ten days?

A. It would have shown more loss for the period.

Q. It would have shown more loss for the period if you had not included the first ten days in April?

A. It would have.

Q. In other words, you must assume vice versa, there was a profit during those ten days?

Mr. Andersen: Same objection.

The Court: I didn't get that.

Q. Do you assume there was a profit for the first ten days of April?

Mr. Andersen: The same objection.

The Court: I think the record, as it is now, speaks for itself.

Mr. Banfield: I think so also.

(Whereupon the jury was duly admonished and Court adjourned until 2 p.m. May 9, 1949, reconvening as per adjournment with all parties present as heretofore and the jury all present in the box; whereupon the witness Marc S. Boles resumed the witness stand and the Direct Examination by Mr. Banfield was continued as follows: [722]

(Testimony of Marc S. Boles.)

Q. Mr. Boles, I asked you this question regarding Exhibit 14, now I would like to ask it regarding Exhibit 15: what standards of accounting did you use in preparing it?

A. All the standard accounting procedures and practices generally used by accountants under the same or similar circumstances.

Q. At the time you testified regarding the profit and loss statement for the fiscal year 1948-1949, we did not have it marked for identification. I would like to know if all your testimony which you gave regarding the balance sheet and profit and loss statement for that fiscal year is with reference to the document now marked Plaintiff's Exhibit 14?

A. It is.

Q. And was all your testimony with regard to the loss of profits given with reference to the document marked for identification as Plaintiff's Exhibit 15? A. It is.

Q. Now, Mr. Boles, did you have any conversations during last summer with the pickets down there at the plant? A. Quite often.

Q. Did you have any conversations with them regarding the departure of a barge of lumber?

A. I did.

Q. Will you state when that conversation took place? [723]

A. On August 26 or 27, 1948.

Q. And with whom did you talk?

A. With Joe Gaines and Pete Rasmusson.

(Testimony of Marc S. Boles.)

Q. And what were they doing at the time?

A. They were picketing the plant.

Q. Were they carrying signs?

A. They were.

Q. What did they state.

A. Pete Rasmusson asked me where the barge was going and I just ignored him. Pete said "We know a lot of places where that barge could go and we intend to know where it is going and we intend to follow that barge."

Q. Mr. Boles, with respect to the repair work which has been charged into the books and reflected on the exhibits, or Exhibits for identification marked 14 and 15, what practice do you follow with regard to what is repairs and what is not repairs when you make book entries?

A. All items which are not connected with the actual handling of the main products are called by us "repairs and maintenance."

Q. What do you mean by that?

A. A sweeper or an oiler in the plant would be classified as repairs.

Q. A sweeper?

A. A man who sweeps and pushes trash on the chain carrying it [724] to the burner.

Q. That would be repairs? A. Yes.

Q. Why repairs instead of labor?

A. It is purely arbitrary on our part, due to the fact that we want to know what our man hours are in handling the main product and what are not connected with handling the main product.

(Testimony of Marc S. Boles.)

Q. General maintenance includes floor sweepers and odd jobs like that? A. It does.

Q. You might say keeping the property in condition to use, is that correct? A. Correct.

Q. Can you tell us how much you actually charged into the repair accounts in 1948?

A. A total amount of repairs for 1948 and '49 include the cost of building the fence and moving the retail shed, $117,503.41.

Q. For the fiscal year 1948-1949?

A. Yes, that is for the fiscal year 1948-1949.

Q. In setting up your prospective profit and loss statement here, which is Exhibit 15, how much did you allow for repairs if you had been operating in the regular fashion? A. $187,736.61. [725]

Mr. Banfield: You may cross-examine.

Cross-Examination

By Mr. Andersen:

Q. Mr. Boles, as I understand it, all these figures to which you have testified, you received estimates, etc., you received from people in the operating branches of the business, is that true?

A. It isn't.

Q. Referring to Mr. Prawitz's testimony or some sheet he referred to, page seventeen, you saw that, didn't you? A. Yes, sir.

Q. What does that sheet purport to be?

A. That was furnished to me by Mr. Prawitz.

Q. What does that purport to be?

A. The sales price Dant & Russell could have sold our lumber at.

(Testimony of Marc S. Boles.)

Q. Sales price information received from other sources? A. Correct.

Q. That is what I said a moment ago, isn't that true?

A. If you will qualify your question, "Did you get your sales prices from outside" I will answer "Yes."

Q. That is all I referred to. Is that correct?

A. As far as sales prices.

Q. You got that information from Mr. Prawitz, is that true? [726] A. That is true.

Q. You didn't make any other check with respect to the figures from Mr. Prawitz?

A. No.

Q. You took those figures? A. Yes, sir.

Q. With respect to the information you got from Mr. Prawitz, all other information you used, I assume, you got from other men connected with the Company. Is that true? A. No, sir.

Q. Do you sell any lumber yourself?

A. No, sir.

Q. Do you work in the mill yourself?

A. No, sir.

Q. You just work in the accounting office of the Company here, is that correct? A. Yes, sir.

Q. Or is your office in Coos Bay?

A. Our office is here.

Q. You spent all your time in an office, isn't that true? A. Yes, sir.

Q. You don't have anything to do with the manu-

(Testimony of Marc S. Boles.)

facturing end of it at all? A. No, sir.

Q. You don't buy anything, do you? [727]

A. Yes, sir.

Q. Do you attend to purchases also?

A. To some extent.

Q. What do you buy?

A. Office supplies, also——

Q. What do the office supplies amount to in a year? A. They don't amount to anything.

Q. They don't amount to anything so you don't buy any? You don't manufacture and you don't buy, so didn't you get figures from people who were in the manufacturing or——

Mr. Banfield: I object to counsel's saying one thing and asking a question on another and when he was asked on the original question he started to say office supplies and he said they don't amount to anything. The witness did not have a chance to finish the answer and he was asked "isn't it a fact all your information was from somebody else?" The witness said "No" and then he cross-examines as if he got no information. He said he didn't get all his information. I don't think the Court should allow badgering of the witness.

The Court: He has latitude on cross-examination and is not bound by the exact statement. Objection overruled.

Q. Just go back on the one I asked, if you bought anything. You said yes, you bought office supplies. Isn't that true?

(Testimony of Marc S. Boles.)

A. I said for one thing I bought office supplies.

Q. For one thing you bought office supplies, and I asked what they amounted to and you said they didn't amount to anything, is that true?

A. Correct.

Q. Anything else?

A. I signed contracts for oil and gas for the Company.

Q. And that doesn't amount to anything?

A. On office supplies.

Q. That is your testimony, is that true?

A. Yes.

Q. What else do you buy?

A. I just said I signed contracts for oil and gas for the Company.

Q. Is that a momentous amount?

A. Quite a bit, fifteen thousand a year.

Q. Do you buy it, or does somebody else arrange for its purchase?

A. It is kind of a four-cornered deal in the office.

Q. You didn't exclusively handle the matter of buying gas and oil for the Company? A. Yes.

Q. You just signed the contracts? A. Yes.

Q. Somebody else arranged the purchase and you signed for it if it was a material matter? [729]

A. Correct.

Q. What else do you buy?

A. On hand I would hesitate to say.

Q. With respect to all these figures then that have been mentioned here your source of information is somebody else, isn't that true?

(Testimony of Marc S. Boles.)

A. No, it isn't.

Q. What do you want the record to be?

A. I reviewed the previous records of the Company, and based on the previous records of the Company I made a forecast of the future.

Q. You made a forecast, what is called a professional guess—is that right? A. Yes.

Q. Now, I assume—by the way, when did you start to work on these figures?

A. Oh, about six weeks ago, with the exception of course of the regular accounting statement of the Company.

Q. Then I assume, you have had conferences with counsel? A. Yes, sir.

Q. And conferences with many other people?

A. Yes, sir.

Q. And you knew what you were getting these figures up for? A. Very definitely.

Q. In the interests of the Company? [730]

A. I work for the Company.

Q. You got them up in the interests of the Company, didn't you? A. Yes.

Q. Did you prepare these statements, these documents, in the same manner as you would prepare an income tax, calculation or report for the Company? A. Yes, sir.

Q. The same way? A. Yes, sir.

Q. The profits and loss in the same way as they are disclosed for income tax, as far as the Company is concerned? A. Yes, sir.

(Testimony of Marc S. Boles.)

Q. Again, for the interest of the Company—that is your primary interest here, is the interest of the Company, isn't that true?

A. Yes, sir.

Q. So to summarize this aspect of your testimony, you buy some small amount of supplies for the Company, you signed contracts when other people have arranged for the purchase of these commodities, and the rest of your testimony is a prognosis or guess or what the Company may have done in the future, barring all accidents and based on information from other people and the history of the operation of the Company? [731] A. No, sir.

Q. For how long?

A. One full year, the fiscal year May 1, 1947, ending March 31, 1948.

Q. How much of that time did the Company operate?

A. It operated the full mill up until late in November, the planing mill until January of 1948.

Q. You didn't take any figures subsequent to that fiscal year date?

A. Prior to that fiscal year date?

Q. Subequent to that fiscal year date.

A. Subsequent to that fiscal year date we were shut down.

Q. In this professional guess of possible profits, did you also include the time of the general strike on the Pacific Coast?

A. There was no necessity. We could still ship:

(Testimony of Marc S. Boles.)

Q. Did you include it or not?

A. Included.

Q. The ninety five day strike on the Pacific Coast, you are including that, aren't you?

A. Yes, sir.

Q. You included that period also in this itemization you made? A. Yes, sir.

Q. In other words, you included everything possible, didn't [732] you? A. Yes, sir.

Q. I understand, in a few instances you doubled estimates of expenses so you would be safe. Is that true? A. Yes, sir.

Q. During the period of the shut-down as you put it, key men were kept on the payroll?

A. Yes, sir.

Q. I guess that was wherever the plant operates, is that true?

A. I am sorry, I don't follow your question.

Q. You stated key men were kept on the payroll. Is that true? A. Yes, sir.

Q. Whether they did anything or not?

A. They were kept on, but they were kept busy.

Q. They were kept on the payroll?

A. Yes, sir.

Q. And if they were kept busy it was sort of making work? If you know——

A. I don't go through the plant every day. I am not sure of what every man in the plant was doing.

Q. You don't know? A. No.

(Testimony of Marc S. Boles.)

Q. Were men kept on the payroll at Juneau?

A. Yes.

Q. At the mill? A. Yes, sir.

Q. And other places where the mill operates?

A. The mill is only in Juneau.

Q. Other operations?

A. Our retail yards at Fairbanks and Anchorage were operating.

Q. You did keep key men on the payroll here?

A. Yes.

Q. A man named Flint—did you keep him in the manner which you have indicated?

A. Bill had been working for the Company.

Q. During the period I indicated?

A. Yes, sir.

Q. You considered him a key man, did you? You only kept key men, didn't you?

Mr. Strayer: The witness hasn't testified to that.

Mr. Andersen: I will withdraw it.

Q. You kept key men on the payroll, isn't that true? A. Yes, sir.

Q. And you kept Mr. Flint, is that true?

A. Yes, sir.

Q. And of course with respect to your profit and loss sheet there, page 4A of the report, and you refer to a loss of some five hundred-odd thousand dollars, loss of anticipated [734] profits?

A. Actual loss, sustained due to the shut-down.

Q. You didn't include a professional guess of profits? A. I did not.

(Testimony of Marc S. Boles.)

Q. You say just "actual loss"?

A. Yes, sir.

Q. In other words, the plant shut down for how long a period of time, according to your idea?

A. The plant was shut down on the morning of April 10, 1948.

Q. To July 19?

A. The plant got about half open on July 19.

Q. And shut down to what date?

A. October to the present time.

Q. The fiscal year—you have only gone to the end of the fiscal year? A. Yes, sir.

Q. And that would be March 31, if I recall correctly? A. Yes, sir.

Q. A period of some eight months, is that correct? A. Yes, sir.

Q. So by not operating your loss every month then, roughly in other words you lose $75,000 a month if you don't operate. Is that what I understand you to say? A. Approximately that.

Q. You lose $75,000 a month if you don't operate. Tell me [735] how you operate at a loss of $75,000 a month if you don't operate? Withdraw that, please. If you don't operate the plant you keep watchmen there, don't you? A. Yes, sir.

Q. And how much does that cost?

A. About $40 a week per man.

Q. And you pay taxes of course?

A. Yes, sir.

Q. Do you know what this corporation pays in taxes to the City of Juneau?

(Testimony of Marc S. Boles.)

A. I can look it up.

Q. Give me your estimate now, please.

A. About $7,200 a year.

Q. $7,200 a year in taxes to the City of Juneau. Well, when the plant is shut down you don't use any electricity to speak of, do you?

A. We use more. We are forced to buy more.

Q. You use more when shut down than when operating. A. No.

Q. When?

A. I say, we are forced to buy more. Ordinarily we generate our own.

Q. How much does your electrical bill amount to when you are shut down?

A. Between five and six hundred dollars. [736]

Q. A year or month? A. A month.

Q. When you are shut down?

A. Yes, We have to keep the motors and all the equipment warm.

Q. Four or five hundred dollars a month for electricity? A. Yes, sir.

Q. What other expenses do you have?

A. We keep the roof in repair and the dock in repair.

Q. Incidentals?

A. Depreciation expense, insurance——

Q. Depreciation expense is a bookkeeping item. I am talking about money that is actually spent.

A. Depreciation is just as much an expense. This equipment wears out.

(Testimony of Marc S. Boles.)

Q. Correct. It is an accounting item.

A. It rusts and goes to pieces.

Q. True. It was shut down three months. Did you write a lot of money off in depreciation from April through July?

A. It depreciates just as fast in this weather when it is sitting as when it is running.

Q. You included it as a loss in this?

A. Yes, certainly.

Q. How much did you include in here for depreciation of your plant during that shut-down period? [737]

A. This equipment depreciated about $125,000.

Q. In this short period of time you put down a depreciation figure of $125,000?

A. Yes, sir.

Q. This is what you call good bookkeeping practice? A. It is good accounting practice.

Q. I assume this charge of $125,000 depreciation was made pursuant to this good bookkeeping practice you talk about? A. Yes, sir.

Mr. Andersen: That is all, sir. Thank you. I am sorry, I have one further question.

Q. When did you have the conversation with these two men in front of the plant?

A. In the evening when we were loading the barge. I stopped to razz them.

Q. You stopped to razz them?

A. Yes, certainly. They had to work overtime that night.

(Testimony of Marc S. Boles.)

Mr. Andersen: Thank you. That is all.

Redirect-Examination

By Mr. Banfield:

Q. The $125,000 depreciation was over what period?

A. The entire fiscal year, April 1, 1948, to March 31, 1949.

Mr. Banfield: That is all.

(Witness excused.) [738]

JAMES FREDERICK CHURCH

(Whereupon James Frederick Church was called as a witness on behalf of the plaintiff and was duly sworn; respective counsel made statements to the Court with reference to the testimony to be elicited from the witness, and the witness thereafter testified; respective counsel thereafter made further statements to the Court; (the order for this transcript excluded the verbatim transcript of this portion of the record); whereupon the following took place:)

The Court: Let the record show that the stipulation is that the I.L.W.U. is a labor organization as within the meaning of the Taft-Hartley Act. The testimony of the witness will therefore be stricken as having been superseded by the stipulation and the jury is instructed to disregard it.

(Witness excused.)

TREVOR DAVIS

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct-Examination

By Mr. Banfield:

Q. Will you state your name, please.

A. Trevor Davis.

Q. What is your occupation?

A. Photographer.

Q. Have you been engaged in that business in Juneau for the past two years? [739]

A. Yes, sir.

Q. Mr. Davis, did you take any pictures of the Juneau Spruce Corporation?

Mr. Andersen: Show us the pictures and maybe we will stipulate.

Mr. Banfield: We would like to stipulate that these photographs were taken in the latter part of October, 1947—— A. 1948.

Mr. Banfield: 1948, I am sorry, and that they show lumber piled on the Juneau Spruce Corporation dock. We offer them for the purpose of showing the condition of the property at that time, particularly how the place was clogged up with lumber.

Mr. Andersen: We will stipulate that the pictures show that.

The Court: Let the record show the stipulation.

(Whereupon the four photographs were admitted and marked Plaintiff's Exhibit No. 16.)

(Witness excused.)

DOROTHY PEGUES

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct-Examination

By Mr. Banfield:

Q. Will you state your name please. [740]

A. Dorothy Pegues.

Q. What is your occupation?

A. Editor and publisher of the Alaska Sunday Press.

Q. Is that published at Juneau? A. Yes.

Q. Do you also do writing and reporting on the paper? A. Yes, I do.

Q. Tell me, did you ever interview Mr. Vern Albright regarding the dispute between the Juneau Spruce Corporation and the longshoremen at Juneau? A. Yes, I did.

Q. Will you tell us the first instance of this briefly, what happened, when and where?

A. I believe the first time I actually interviewed him was in my office. It was back in June——

Q. Of what year?

A. This last, past June, of 1948.

Mr. Andersen: Did you say June, madam?

A. Yes.

Q. How did it happen you had this interview at that time?

A. At that time the dispute—the story at that time was about the progress Mayor Hendrickson had made in an effort to settle the dispute between

(Testimony of Dorothy Pegues.)

the longshoremen and the Juneau Spruce Corporation——

Mr. Andersen: I am sorry, I didn't hear you.

A. Between the longshoremen and the Juneau Spruce Corporation.

Mr. Andersen: You said something about settling something?

A. Yes, Mayor Hendrickson made an effort to settle the dispute.

Q. Did Mr. Albright give you a statement at that time?

A. Yes, he did. He came into my office and we talked about it and then he dictated a statement and I took it on the typewriter.

Q. Was that statement published in the paper as he gave it to you? A. Yes, it was.

Q. I will hand you page eight of the Alaska Sunday Press June 6, 1948, and ask you if this contains the statement made by Mr. Albright?

Mr. Andersen: I assume my same objection regarding the International will run?

A. Yes, that is the statement he gave me.

Q. Was there anyone with him at that time?

A. I don't recall. I believe there were several men came in at different times.

Q. Who did the talking A. Mr. Albright.

(Whereupon counsel for plaintiff handed the newspaper to Mr. Andersen.) [742]

Mr. Andersen: It is rather contemptuous to be

(Testimony of Dorothy Pegues.)

reading a newspaper in the courtroom, your Honor.

Mr. Banfield: It will be all right under the circumstances, I am sure. If the Court please I would like to offer this in evidence as a statement by Mr. Albright. The part we offer is for the purpose of showing his quotation on page eight.

The Court: If there is no objection it may be admitted.

(Whereupon the newspaper was submitted and marked Plaintiff's Exhibit No. 17.)

Q. Was Mr. Albright ever in your office again after that? A. Yes, he was.

Q. For what purpose?

A. To give us an interview regarding the longshoremen's strike.

Q. Did he dictate a statement?

A. Yes, on one occasion.

Q. How did you take it down?

A. On the typewriter.

Q. Do you know when that was?

A. On the second occasion?

Q. Yes.

A. It was for our July 4 issue. As I recall, it was the day before. I am not positive. [743]

Q. Who was with him?

A. He came with Mr. Wukich, who was at that time President of the Union.

Mr. Andersen: That is, of Local 16.

A. That is right.

(Testimony of Dorothy Pegues.)

Q. I will hand you here a statement or a sheet of paper and ask you if that is what you took down on the typewriter at that time?

A. Yes, that is it.

Q. Now, underneath this typed part there are a few written words "declared in a signed statement." How do those happen to be on there?

A. I asked him to sign the statement.

Q. You asked him to sign it?

A. I told Mr. Albright I wanted the statement signed.

Q. Did he sign it?

A. No. He told Mr. Wukich to sign it.

Q. Did Mr. Wukich sign it?

A. Yes, he did.

Mr. Banfield: I offer the statement in evidence, your Honor.

The Court: If there is no objection it may be admitted.

Mr. Andersen: I object as far as the International is concerned, of course. [744]

(Whereupon the exhibit was admitted and marked Plaintiff's Exhibit No. 18.)

Mr. Banfield: You may cross-examine.

The Court: Are you going to read these in evidence?

Mr. Banfield: If the Court please, I could read them.

The Court: You have to do it while the witness is on the stand.

(Testimony of Dorothy Pegues.)

Mr. Banfield: That is right.

Mr. Andersen: I won't make any point of that, your Honor .

Mr. Banfield: I desire, however, to read a portion of the statement here. "Mr. Albright made the following statement: 'The publishing of Mayor Hendrickson's Return to Work Proposal has the appearance of an employer inspired publicity dodge, the purpose of which is to shift the blame of the existing dispute between the Corporation and the Longshoremen from the shoulders of the Corporation to that of the Longshoremen. The meaning and intent of the Mayor's proposal appears innocuous to most persons unacquainted with the facts governing this dispute. It would result in Juneau longshoremen losing a great deal of their work for all time, establishing a dangerous precedent which in all probability would cause the spread of the dispute to all mill towns in Southeast Alaska.

"It also is a subterfuge by which the employer is enabled to avoid bargaining collectively with employees who have performed this work in Juneau for a number of years past. At no time during the existing dispute have the longshoremen refused to meet or bargain with the Mill Corporation. The Corporation has consistently refused to bargain with the longshoremen. [745] Such bargaining would, without a doubt result in resolving this dispute in a few hours.'" The other exhibit reads as follows: "Picket line remains. The I.L.WU. picket

(Testimony of Dorothy Pegues.)

line established April 10 is still being maintained and according to a statement made yesterday by officials of the Union, will be continued until such time as a satisfactory agreement to the Union is reached. 'Until a satisfactory agreement is reached in the dispute of the I.L.W.U. No. 16 with the Juneau Spruce Corporation, the Union will consider the crossing of its picket lines as strike-breaking.' Anthony Wukich, Union President, declared in a signed statement. Signed Anthony Wukich."

Cross-Examination

By Mr. Andersen:

Q. I assume, Mrs. Pegues, during the course of the strike you wrote many articles?

A. Several.

Q. Several? A. Yes.

Q. How often does your newspaper come out?

A. Once a week.

Q. Didn't you have an article every week?

A. I don't believe so.

Q. You wrote many articles? [746]

A. It would be from April the tenth.

Q. Until the present time?

A. Yes, off and on.

Q. So you wrote plenty of articles?

A. How many do you mean by many? Maybe one week and not for another week?

Q. I asked if there was one every issue?

(Testimony of Dorothy Pegues.)

A. No, I didn't. I didn't have a story in every issue, I don't believe.

Q. You may have missed one, or every other one? It was going on for months, so really you have written many stories about it?

A. I don't know what you call many.

Q. Did you only talk to Mr. Albright on the two occasions?

A. One or two other times he came in with other people. We didn't talk much.

Q. Other people? Local 16 and Mr. Albright, and you talked to them?

A. As a matter of fact, I don't believe I talked to any of the other local longshoremen at any time.

Q. Except Mr. Wukich?

A. He was with Mr. Albright.

Q. You talked to both of them?

A. When they were together.

Q. You haven't talked to any other longshoremen about it? [747]

A. I don't believe so.

Q. Did you interview the Company from time to time?

A. Very seldom. About two or three times.

Q. You interviewed this Union how many times?

A. When they came into the office.

Q. Where did you interview the Company?

A. Over the telephone. I called them up, and one time I went down.

Q. In other words, you would phone the Com-

(Testimony of Dorothy Pegues.)

pany or go to the plant to interview them and you would wait for the longshoremen to come in?

A. No. I called them—I called Mr. Albright for a statement. They were more difficult to contact.

Q. When did you call Mr. Albright? Was that with relation to one of these articles?

A. Yes, I believe that first one, the story of June 6.

Q. The newspaper account? A. Yes.

Q. With particular reference to this other one, with particular reference to this Exhibit 18, which is the plaintiff's exhibit, I guess Mr. Albright talked to you at this time in substantially the same manner as he talked to you other times?

A. Yes. He came in to make a statement.

Q. It had relation to the same situation? That is, this [748] labor matter?

A. The picket line.

Q. And it was the same general situation?

A. It depended on what he was talking about. It was about this jurisdictional trouble.

Q. He might say different words to you each time but it related to this difficulty at the mill, isn't that true?

A. Different aspects of the case, as it went along.

Q. When he came in to you this time, this exhibit in my hand—you don't want to read it again?

A. No.

(Testimony of Dorothy Pegues.)

Q. He came in to you on or about the third of July and he came with Mr. Wukich, the President of Local 16. Is that true?

A. At that time, yes.

Q. He came to sign it and he said he couldn't?

A. He just said to Wukich "Sign it." He just said "Sign it, Wukich."

Q. Wasn't there any other discussion about it?

A. About why he should sign it?

Q. Did you ask Mr. Albright to sign it?

A. Yes.

Q. He didn't, and he had Mr. Wukich sign it?

A. That is right.

Q. Did you have any discussion about it? [749]

A. Yes.

Q. He and Mr. Wukich were there alone?

A. Yes, just the two of them, as I recall.

Q. The day before you went to press?

A. I believe it was on Saturday.

Q. July 3, as I understand your testimony?

A. Saturday, I am not positive.

Q. How long were they there before this was typed up?

A. I should say probably ten minutes. I don't know the exact time.

Q. Did you talk generally about the trouble at the mill?

A. Not too much. They were in a hurry and it was our busy day.

Q. He made the statement and out they went, is that correct?

A. Yes.

(Testimony of Dorothy Pegues.)

Q. You didn't mention Mr. Albright's name in this statement?

A. No, not in this. It might be in some other part of the story.

Q. This is just one portion of the story?

A. That is right.

Mr. Andersen: Thank you.

Mr. Banfield: Thank you.

(Witness excused.) [750]

LUDWIG C. BAGGEN

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. State your name, please.

A. Ludwig C. Baggen.

Q. Mr. Baggen, what is your occupation?

A. I run a tugboat.

Q. What is the name of the boat?

A. "Santrina."

Q. Who owns the boat?

A. Juneau Spruce Corporation.

Q. How long have you been master of this boat for this Company?

A. I have been master of this boat ever since this Company has had it.

Q. Were you the master of the boat during August, 1948?

A. Yes.

(Testimony of Luwig C. Baggen.)

Q. Did you take the vessel to Prince Rupert at that time? A. I did.

Q. And do you remember what the date was that you were in Prince Rupert? What dates you were there with the "Santrina"?

A. I couldn't remember off hand.

Q. I will ask you, Mr. Baggen, if you care to refresh your [751] memory from the log book of the "Santrina." Do you know what dates you were in Prince Rupert?

A. What date I was in Prince Rupert?

Q. Yes.

A. I arrived in Prince Rupert on August 30.

Q. And how long was the boat there?

A. Till September the third.

Q. What was the purpose of going to Prince Rupert at that time?

A. I was towing a barge load of lumber.

Q. You were towing a barge load of lumber?

A. I was towing a barge load of lumber, yes.

Q. Was it lumber of the Juneau Spruce Corporation? A. It was.

Q. Where was it supposed to be unloaded?

A. At Prince Rupert.

Q. While you were in Prince Rupert on this occasion—I will withdraw that. Do you know Mr. Vern Albright when you see him? A. I do.

Q. While your were in Prince Rupert did you see Mr. Albright? A. I did.

Q. Was anyone with him? A. Yes.

(Testimony of Luwig C. Baggen.)

Q. Who was with him? [752]

A. Joe Guy.

Q. And how many days were you there?

A. Well, I was there from August 30 until September 3.

Q. How many times did you see them there?

Mr. Andersen: By the way, your Honor, the same objection on behalf of the International.

The Court: Very well.

Q. Do you know how many times you saw them, Mr. Baggen?

A. I couldn't say. I would say I seen them three or four times at least.

Q. Was the barge unloaded at Prince Rupert?

A. No.

Q. Where did you go from there?

A. Tacoma.

Mr. Banfield: That is all. You may cross-examine.

Mr. Andersen: No questions.

Mr. Banfield: That is all.

(Witness excused.)

Mr. Banfield: If the Court please, we would like to have about a five minute recess at this time —ten minute recess, if the Court please.

The Court: Very well. Is this your last witness?

Mr. Banfield: Yes, your Honor. We think it will be the last witness. We want to examine some exhibits marked for identification. [753]

Mr. Strayer: Before the recess, your Honor, is counsel going to produce the records of Local 16 or ascertain if he could produce any information yet?

Mr. Andersen: We are unable to find the matter to which you refer.

Mr. Strayer: May the record show that then. Mr. Andersen, will you make a statement for the record that you made a search and were unable to locate the records?

Mr. Andersen: Of the kind to which you refer.

Mr. Strayer: Of Local 16?

Mr. Andersen. Yes.

(Whereupon Court recessed for ten minutes, reconvening as per recess with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:)

Mr. Strayer: If the Court please, that completes the plaintiff's case with the exception of certain exhibits we wish to offer in evidence. We offer in evidence Plaintiff's Exhibit 3 for identification, stipulated to be the Constitution of the International Longshoremen's & Warehousemen's Union.

The Court: It may be admitted.

Mr. Strayer: Also we wish to offer in evidence Plaintiff's Exhibit 4 for identification, which is stipulated as the Constitution and By Laws of Local 16, I.L.W.U. [754]

The Court: It may be admitted.

Clerk of Court: The first one has been marked

Plaintiff's Exhibit No. 3 and this one has been marked Plaintiff's Exhibit No. 4.

Mr. Strayer: We offer in evidence the instrument, the Plaintiff's Exhibit 5 for identification, which is a copy of a letter dated October 18, 1947, which has been referred to in the testimony.

Mr. Andersen: May I see that?

Mr. Strayer: I will state for the record, your Honor, that when Mr. Schmidt was on the stand and being cross-examined by counsel for the defendant, he was testifying about a letter which he wrote to Mr. Hawkins, and Mr. Andersen objected, that the letter was the best evidence, and this copy of the letter was produced. We offer it as the best evidence of that portion of the testimony.

The Court: It may be admitted.

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit No. 5.

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial. I didn't make the best evidence objection, but also it is self-serving.

Mr. Strayer: I don't claim anything for the letter except it was referred to in the testimony of Mr. Schmidt. We offer Plaintiff's Exhibit 10 for identification which was [755] referred to by the witness Schmidt, and also by the witness Boles.

Mr. Andersen: The same objection, may it please the Court.

The Court: The same ruling.

Clerk of Court: The exhibit has been marked the Plaintiff's Exhibit No. 10.

Mr. Strayer: We offer in evidence Plaintiff's Exhibit 13 for identification. This sheet referred to by the witness Boles and also by the witness Prawitz.

Mr. Andersen: The same objection.

The Court: It may be admitted.

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit 13.

Mr. Strayer: We offer in evidence Plaintiff's Exhibit 15 for identification which is the statement of profit and loss testified to by the witness Boles.

Mr. Andersen: The same objection, your Honor.

The Court: Was all of that testified to by the witness?

Mr. Andersen: I believe it was, your Honor.

Mr. Banfield: The testimony was that these extra sheets were explanatory and details of the profit and loss statement.

The Court: Explanatory of the witness's testimony? [756]

Mr. Banfield: And of the original profit and loss statement to which he testified, and supporting it.

The Court: In other words, it is just merely the breakdown of the figures to which he testified.

Mr. Banfield: That is right.

The Court: It may be admitted.

(Whereupon the exhibit was marked Plaintiff's Exhibit No. 15.)

Mr. Strayer: We offer from the original plead-

ing file the Special Appearance by Motion to Quash Service of Summons by the International Longshoremen's and Warehousemen's Union together with the Affidavit of Vern Albright attached and made a part thereof.

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial in this proceeding.

The Court: Whose affidavit?

Mr. Strayer: Vern Albright, for the purpose of showing the interest of the International.

Mr. Andersen: The same objection—incompetent, irrelevant and immaterial.

The Court: The objection is overruled. It may be received.

Mr. Strayer: May we separate that from the original pleading file? I believe you have the original pleading file.

Mr. Andersen: With respect to the last exhibit, [757] counsel states that he offers it in evidence. There can be no qualification. If it goes into evidence it is not for any limited purpose.

The Court: If he offered it generally for introduction into evidence that seems to strip it of any conditions or qualifications.

Mr. Andersen: Why don't you have a copy of it made?

Mr. Strayer: I think that would be much more satisfactory, if it is satisfactory with the Court.

Mr. Andersen: I will stipulate a copy may be used without giving up my objection.

Mr. Strayer: What number will that be?

Clerk of Court: Number 19.

Mr. Banfield: If the Court please, I think we have one right here.

Mr. Andersen: Are you offering this also?

Mr. Strayer: Yes. That is the document.

Mr. Andersen: We make the same objection, plus that it is hearsay, that it is incompetent, irrelevant and immaterial and hearsay.

The Court: Will you let me see it? I want to see what the hearsay consists of. It may be admitted.

(Whereupon the exhibit was marked Plaintiff's Exhibit No. 19.)

Mr. Strayer: Now, if the Court please, the Plaintiff [758] offers in evidence a certified copy, an authenticated copy by the National Labor Relations Board, in the matter of the International Longshoremen's and Warehousemen's Union, Local No. 16, C.I.O., and the Juneau Spruce Corporation, of the Decision and Determination of Dispute in March, 1949.

Mr. Andersen: I object to that as incompetent, irrelevant, immaterial and hearsay.

Mr. Strayer: I may state this document is offered solely for the purpose of showing a lack of certification of Local 16 which appears as part of our case.

The Court: It may be received for that purpose.

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit No. 20.

Mr. Strayer: We rest, your Honor.

Mr. Andersen: I should like to suggest to the

Court—it is now quarter of four—adjourning to the morning, and probably we can more expeditiously present our case, and I will inform the Court we think our case will take not more than two days and I am allowing for cross-examination.

The Court: I want to conclude the case this week if possible.

Mr. Andersen: I, too. I think we can save time. I have a motion also.

The Court: Perhaps you should make the motion today.

Mr. Andersen: Yes, your Honor. [759]

(Whereupon the jury was excused until ten o'clock a.m. May 10, 1949, and retired from the courtroom.)

Mr. Strayer: I neglected to ask your Honor, I am not familiar with the practice here, I understand the reading of various exhibits may be reserved until the time of argument?

The Court: I doubt whether, under our practice, it can be read at the time of argument, if it is not read while the witness is on the stand.

Mr. Strayer: The witness was not on the stand when the Constitution was introduced.

The Court: Under a stipulation the rule wouldn't apply.

Mr. Strayer: And the same thing would apply on the Board's decision.

Mr. Andersen: The motion I intend to make at this time, particularly on behalf of the International,

may it please the Court, is for an advised or whatever term is used here, advised or a directed verdict; may it please the Court. The point is simply stated and clearly set forth in Plaintiff's Exhibit 19 there, namely that, as I understand the Taft-Hartley Act, it simply in so far as agency is concerned—and I assume the Court sees the point I am making—it is a common law rule in essence of course, is that if I go down to buy an automobile as I said the other day for Judge Folta [760] before they can hold Judge Folta for it they must have more than my word. There must be something on behalf of Judge Folta before Judge Folta can be forced to pay for that automobile. Here there is not a single piece of evidence at this time, so far as the International is concerned, saving and excepting evidence of alleged agents, as to the extent of anybody's authority to bind the International or showing that anybody would have authority to bind the International in relation to anything that occurred. As a matter of fact the evidence is crystal clear that until long after the dispute arose the International wasn't even here. I direct your Honor's attention to the pleading, April 10 as the effective day. The undisputed evidence is that Vern Albright wasn't here until May 8, roughly six weeks after. So far as Mr. Bulcke is concerned, he was here only on one occasion, and there was no labor dispute of any kind, simply a little grievance that apparently was lost in the wash, so to speak. Then counsel have introduced in evidence Exhibit 19.

They have introduced it in evidence. I assume there is the same common law rule here as over all the country. When they offer it they vouch for it. There is no dispute about that principle, so in Exhibit 19 these gentlemen say that Mr. Albright had no authority of any kind to bind the International. That is what they say when they introduce this exhibit in evidence. They say Mr. Albright said he has no authority to bind the International in anything, that his sole [761] duties are to render aid—I am paraphrasing, your Honor will look through it—and advice to the Local, and has no authority to bind the International in any situation of this kind. That is the gist of what he said.

The Court: I think counsel is offering that for its admission.

Mr. Andersen: I made the statement, it was introduced in evidence by counsel. I don't know what admissions they could possibly refer to. The only thing he says is that he has no authority of any kind. That is what he says.

The Court: That is not the kind of admission for which they would offer it.

Mr. Andersen: I don't see how they could offer if for anything else. They must offer it for something. The only admissions in the document are that Mr. Albright had no authority to bind the International.

The Court: That would be an admission from your viewpoint, but not an admission from the

plaintiff's viewpoint and it couldn't be the admission they offered it for.

Mr. Andersen: Your Honor, when I made the statement your Honor said it was offered generally. I said yes. I directed to your Honor's attention it was offered generally and went in generally. I excepted to any limitation of the offer. The Court said "generally" and it went in generally, and that was the Court's ruling. I don't believe that makes [762] much difference for the purpose of this argument, whether it was generally or specially. It was offered by the plaintiff. We have got to take the words when it was offered by the other side and interpret the meanings, the meanings normally and naturally applied to the words. It says on the face of this document that he is not an officer or agent upon whom service of process could be made. That was on the Motion to Quash. It doesn't say he is, it says he isn't. They are certainly not offering this kind of exhibit for an affirmative reason.

The Affidavit itself, to which the subheading is attached, says: "Affiant further states with regard to the labor dispute currently existing between the Juneau Spruce Corporation and defendant Local Union 16 of I.L.W.U. as follows: 1. This is a dispute between the Company and Local Union 16. It is not a dispute between the Company and the I.L.W.U."

They can only use it for what it says. Secondly, "Affiant's activities in connection with this dispute in so far as they relate to I.L.W.U. have been

as follows: (a) Making general reports on the dispute to I.L.W.U. approximately semi-monthly; this is part of affiant's general duty to I.L.W.U." —I guess it means to keep it—"informed on the progress of all such matters in which his locals are interested. (b) Rendering to Local 16 his usual advisory services as requested from time to time by Local 16. Such advice has [763] "consisted principally of advice on questions of whether the action or contemplated action of Local 16 is or is not within the power of Local 16, and whether it is or is not advisable to take from time to time. (c) Affiant has made no request either on his own initiative or on behalf of Local 16 for any assistance, cooperation, approval, disapproval, permission or ratification of any kind of action taken by Local 16 in said labor dispute to I.L.W.U. or to any other locals of I.L.W.U. (d) There has been no assistance, cooperation, approval, disapproval, permission or ratification by I.L.W.U. of any of the action taken by Local 16."

To me, that means what it says, may it please the Court, and when it is introduced by the other side they vouch for its truthfulness. I think that is the general rule. They say that as the rule, and as a matter of fact, the International hasn't ratified, condoned, or anything with respect to this dispute. I don't see how it could be more clear than that, may it please the Court. There are other points I could raise, too. I am sure the Court has the evidence in mind.

To recapitulate, Mr. Bulcke talked to Mr.

Schmidt, I think he said back in 1947, several months before this started. Mr. Bulcke didn't enter into it except this afternoon, and that was stricken. The evidence is limited to statements of agents, whether they used Mr. Berry as agent or Mr. Albright as agent. They produced the statement that the [764] International has nothing to do with this think at all. That is the state of the evidence. Unfortunately I cannot, at this time, give your Honor any opinions of any Courts, any appellate Court at least, and I don't know—I know of one District Court case where they hold outright that no members of a Union may bind an International, or even a Local, no members may, because I know of one Union in this country, one Local of over twenty thousand members, so a member couldn't bind it. A Union isn't a partnership. A partnership is an organization doing business for profit. A Union is not defined as doing business for profit. They are simply associations. A recognized member of a trade union may not bind the Union. It must be somebody with authority. I cannot give your Honor authorities. There are none, so far as I know, but we do have the general common law rule, that is that a statement of an agent cannot bind the principal. I think that is a time-honored as well as time-worn rule, that is that a statement of an agent cannot bind a principal.

I move for an advised or directed verdict, whatever is the practice. Thank you.

The Court: Do you wish to make a statement?

Mr. Strayer: The only thing I can conclude is that the practice is different in common law in California than in the Northwest. There is abundant support for the implication in your Honor's statement; an interested party in an action, [765] if they introduce that statement in evidence—if there was a letter written by the I.L.W.U. in which they specifically said Albright had no authority, but in the same letter told him to come up and see that the pickets remained on—we could take the part that is to our advantage and disregard the part that is to our disadvantage.

The Court: If you specify the parts you offer it for, the point made by the defense, that hasn't been done. As I recall, you offered it for the admission.

Mr. Strayer: I offered it for the admission against, not by the International, and that was the reason why I offered both the Affidavit of Vern Albright and the document, two which it was attached, made by a party to this action. I don't think—even if it was limited to a single document the manner of offering it generally in evidence was for the purpose of availing ourselves of any admissions in it. I did definitely state at the time I made the offer that that was the purpose.

The Court: It is true an offer may be made coincidentally in that manner, but when it is qualified, your opponent can introduce the rest. If counsel for defendant has been mislead here, that you offered it without qualification, then he was deprived of offering the rest of it for his own pur-

poses, and I don't know whether he wishes to do that or not, but if you wish to qualify your offer—if it hasn't already [766] been done, I thought it had been, but if it has not—you can qualify your offer to include only admissions, then the defense must be given the opportunity of offering the remainder of it.

Mr. Strayer: I thought the record so showed. I offered it solely for the purpose of showing admissions of interest against the International Longshoremen's and Warehousemen's Union.

Mr. Andersen: Again referring to this document, so I can refreshen myself, counsel did say he offered it as an admission against interest. I objected—this is a four or five page document—to it, and the Court said it was being introduced generally in evidence.

The Court: What I meant by that was that no specific part was pointed out or specified except by the term "admissions."

Mr. Andersen: This is an inseparable document, a narrative. He couldn't take out a clause, sentence or paragraph. The whole document must be read together. I don't believe he would wish to do that.

The Court: For the purpose of an offer he could offer a sentence.

Mr. Andersen: Of course, but with this particular document, if your Honor read it I am sure you would agree with me, it wouldn't be done that way. He offered the whole document [767] as an admission against interest. He offered the whole docu-

ment, so the whole document is in evidence. There is no question about that. Counsel simply can't offer a document and by ipse dixit the document is or isn't. The document speaks for itself, not counsel's ipse dixit, so the alleged language of this is what I read to your Honor. This is offered as an admission against interest. This language that "I have no authority."

The Court: I don't construe it as an offer of the entire admission, but all those portions counsel wishes to take advantage of as an admission against interest and that only. I think I might as well avoid further argument on this point, because to remove any misunderstanding I have allowed counsel to modify his offer, and you have now—or at least when the jury is here again—the right to offer the rest of it.

Mr. Andersen: That puts us in a difficult position on this argument, may it please the Court, unless the Court wants—the whole document was offered in evidence and I think if your Honor were to change that rule it would be an error and I would except to it. The whole document is in evidence.

The Court: I think it is unnecessary to argue that in view of my allowing counsel to qualify his offer to remove any uncertainty on that point, by qualifying his offer.

Mr. Andersen: The whole document is before you and [768] before the jury. I told counsel he didn't have to worry about reading it when the

witness was on the stand, with respect to the newspaper. But the whole document is in evidence, the whole document being in evidence I on this motion have a right to use it for whatever service——

The Court: Everything but the admissions from the plaintiff's standpoint. Anything else that is in your favor is for you, if you believe it is in your favor.

Mr. Andersen: That is——.

The Court: Those portions under the ruling of the Court no longer bind the plaintiff. It is received in evidence for its admission. You can consider whatever parts are in favor of the defense, but they are not chargeable with those under the qualified offer made a while ago.

Mr. Andersen: Maybe we don't understand this. As I understand, counsel has offered the whole document.

The Court: For its admission.

Mr. Andersen: So the whole document is in evidence. Being in evidence, I can use it for any purpose that I wish.

The Court: Certainly.

Mr. Andersen: And so I use it in support of our position that the International, it shows the International has nothing to do with this lawsuit. I use it for that purpose.

The Court: You can use it for that purpose.

Mr. Andersen: It says here, as I read a few minutes [769] ago, to paraphrase it, it said "The International never had anything to do with it,"

Albright speaking, "I don't have authority in so far as the International is concerned to bind it in any matter of this kind and it never ratified, condoned or approved anything that went on here." That is in the Affidavit.

The Court: I understand, but all it presents is a conflict in the evidence.

Mr. Andersen: No, I don't believe it presents a conflict, because again on the other facet of this, the only evidence we have is a statement of an agent. I don't care who they refer to, it is still just an agent. Albright is characterized in that document——

The Court: Is it sufficient if he is an agent?

Mr. Andersen: If they proved he was an agent and acted within his authority.

The Court: You said he was still an agent. I wondered if you contended that was insufficient.

Mr. Andersen: Your Honor, the only testimony we have in the case is that certain people testified Mr. Albright was the International Representative. Some of them have testified that, about three people testified that. Mr. Albright testified that he was an International Representative of the defendant I.L.W.U. I believe a couple other people testified in substantially the same manner, but all of them simply characterized [770] him as an agent. Of course, the rule of law is that when a person says he is an agent of anybody else, that doesn't bind the principal unless it is first shown that the agent actually was empowered or authorized by the

principal, or unless within certain areas there is a type of ratification. Those are the only instances in which a principal may be held, as I understand the law of agency, so here we don't find any authorization nor do we find any ratification. We find just to the contrary. It is easier for me to buy an automobile for John Jones and say "I am his agent. Charge it to him." That is the sum and substance. Albright said he is a Representative of the International Longshoremen's and Warehousemen's Union. That is the sum and substance of the evidence, but there is no evidence tending to show as far as the principal is concerned, that there was any authorization or ratification. It completely negatives the idea. I think I have expressed myself on the point as much as need be.

Mr. Strayer: The only thing I can add is that I think counsel is trying to say that we could prove an agency or the scope of agency in a declaration out of court. We don't have that situation here. Albright was present in court and testified he is an International Representative for the Union; on his authority, no extra judicial authority, his Affidavit has been filed by the Union and he said he had certain powers and we rely on those admissions. [771]

Mr. Andersen: That to which he refers, I assume, is the Motion here which is signed by Mr. Paul, by counsel, and it says that the said Vern Albright was not at the said time of purported service of summons an officer or agent upon whom

service of summons may be made, and so on and so forth. That is signed by counsel on a legal paper. I objected to its materiality because in these matters we don't bind our clients by a notice, but the Court admitted it in evidence.

To reply to Mr. Strayer, I don't know that because an agent admits it in court it adds any greater dignity, that he is an agent. It is of equal force out of court. It isn't a question of extra judicial authority. It has no more force outside of court than in court on that one aspect.

The Court: I forgot to ask counsel for the Local if they wished to be heard.

Mr. Roden: Mr. Andersen, may it please the Court, has stated his point very clearly. The agent cannot declare himself the agent and, where there is nothing to show that any action has been taken whatsoever by the International except so far as the statement of the pretended agent, so to speak, and it is taken for granted he is the agent, it is only his naked statement which is before the Court. He said "I am the agent." There has not been one scintilla of evidence showing that the International recognized him or acknowledged him as an agent, and under such evidence as introduced that he is an [772] International officer here and testified whether or not in fact he is such an agent, his own declaration is certainly not sufficient. I think that is the gist of it.

The Court: I think there is sufficient evidence on that point to go to the jury. Motion denied.

Mr. Andersen: I have one other point I would like to raise for preservation of the record. Your Honor will recall that when this dispute arose there was the I.W.A. which said, "It is all right with us, Mr. Hawkins of the Juneau Spruce Corporation, to let the I.L.W.U. do the work." That was the basis. There is a broad public policy in view of the fact the Taft-Hartley Act allegedly was passed for the purpose of avoiding jurisdictional disputes. The action of the Company here in refusing to turn it over to them vitiates the purpose of the act. It is undisputed at this point that up until July 6 the Company could have operated at full force simply by allowing the I.W.A. to relinquish under the contract. Testimony is in evidence by half a dozen witnesses, and the evidence is clear up to this point that the Company was simply standing on a contract by which they were not bound, may it please the Court, in so far as this aspect is concerned.

The Court: You mean the Local, after indicating willingness to relinquish?

Mr. Andersen: Yes. The I.W.A. told Company "We don't want trouble. We figure this work"—I am quoting [773] verbatim—"We figure this work belongs to the longshoremen. Let them have it. We don't want it." They wrote a letter, I believe April 8, a few days before the strike, telling the Company, "It is all right with us for you to give this work to the longshoremen." That is undisputed in the evidence. We take a broad pub-

lic policy that if the Taft-Hartley Act was passed to avoid or prevent jurisdictional disputes in industrial relations, then when a Company for no reason—and the Court will have to agree with me there was no reason in this case for the Company to refuse to hire I.L.W.U. men—and the Court must agree, there is no other evidence in the record. Let me show your Honor a figure here. I don't have to write them down. The payroll was $100,000 a month, that is the undisputed testimony. If the longshoremen did all this work they would have been paid between five and ten thousand dollars a year. Let's take the highest, $10,000 a year, but somebody has to do that work and somebody has to get paid for it, whether the man is a longshoreman or not is immaterial. Wages have to be paid. The testimony was that there was a slight difference in pay between the longshoremen and the mill workers. Let's assume it's twenty per cent, $10,000 worth of wages, gets it down to less than $1,000, less than one-tenth of one per cent of the money spent would have been for longshoremen's wages. What was involved was less than one-tenth of one per cent of the monthly payroll, may it please the Court—less than one-tenth of one per cent. Now we have the rule of de minimus which applies to things like this. That couldn't justify an employer in saying, "We won't hire them. We won't open the plant for a year and we will suffer a million dollars' loss over one per cent in the payroll." What was the Taft-Hartley Act

passed for? Was it so an employer could say to this Union, "There is no dispute among yourselves who shall do this work, no dispute at all. The amount of money involved is completely negligible, but nevertheless we are not going to do business with the longshoremen. You are going to have to do the work." That is their position. I call attention to the public policy in back of the Taft-Hartley Act. That is factual and not denied one iota by the testimony. What is public policy? What is good for the public at large, for the common weal. This Company, because it wouldn't spend to what amounts to less than $1,000, about $500 in wages, wouldn't spend $500 a year on $1,000 a month payroll, comes into court and says, "We had assigned the work to the I.W.A."

That is the only way they have even a toe in the door of this case, may it please the Court, so this Court has the matter of public policy. To permit an employer in that situation to rely on a lawsuit to make his mill pay profits, that is not my idea of public policy. I think this Company, according to the facts as we have them now, arbitrarily and arrogantly [775] asked for and got a labor dispute. This is the most unreasonable employer I ever heard of. When two Unions say, "We don't care who does the work. It is all right with us," it comes under the de minimus non curat lex doctrine for an employer to say, "We are not going to do business with the longshoremen." Even though he might say he would be deprived of his day in

court, it is a matter of public policy. I renew the motion.

The Court: You mean the provision of the law here, if construed in the light of what you say the public policy is, would make this not an unfair labor practice?

Mr. Andersen: I am not too familiar with the unfair labor practice, may it please the Court. That isn't what I say. I am only talking about the policy aspect of the law, the preamble to the Act and in the Act itself, states the public policy. I understand here that one unfair labor charge was filed and dismissed on account of this situation. I think the unfair labor charge—correct me if I am wrong—it was a result of a decision which came in only instituted sometime later, sometime in August. I am talking about the instance of this matter when it first started, may it please the Court. I understand that there were two filed, one before and one subsequent. The first one, I understand, was dismissed. I understand that the Board investigated it and dismissed it. That is along the line I am talking about, may it please the Court. [771]

It is not the policy of the Board, and couldn't be the policy of the Board, and couldn't be the policy of the Act, to prevent two Unions from adjusting work claims among themselves. It would be ridiculous. Here is an employer who can't be hurt and two Unions who say, "Look, rather than have a strike, the longshoremen have always done this work. We figure it belongs to them. Let them

do it." And nobody can complain about it, and most assuredly a Court—I am convinced if the public policy means anything and is applied, this is that type of case. The Court on the status of this ruling must agree with me, rather "hope," I don't like to say "must" to the Court. Those are the facts. The mill wanted to operate. The Woodworkers didn't want to do the Longshoremen's work. The Longshoremen wanted to. The two Unions agreed. For what reason did the Company say, "We want the Woodworkers to do it"? No reason. What is the expressed purpose of the Taft-Hartley Act? It is to foster good labor relations in the United States. That is the public policy of the Act. It simply boils down to the Company saying arrogantly, "We refuse to do business with the Longshormen. It is true the I.W.A. says, 'Let the Longshoremen do it,' but we are still not going to." Then they sue us for a million dollars. What is that but being arrogant and going contrary to the Act on the public policy aspect. It is a broad question.

The Court: Do you make this argument you just concluded [777] in support of this motion?

Mr. Andersen: Yes, your Honor.

The Court: As I said a moment ago, as I construe your argument you contend that the Taft-Hartley Act or those provisions involved in this suit should be construed in the light of that public policy?

Mr. Andersen: Yes, your Honor.

The Court: And that, so construed, the Court would have to hold that this was not an unfair labor practice? Is that correct?

Mr. Andersen: This Court doesn't necessarily proceed on an unfair labor practice, if I understand you.

The Court: Isn't that what you have got?

Mr. Andersen: Section 303 of the Act, which in effect says that they accuse us of creating a jurisdictional strike—that is what they accuse us of.

The Court: Under that clause it defines that as one of the unfair labor practices.

Mr. Andersen: I see what your Honor has in mind. As I understand the facts, they filed two charges of unfair labor practice. The first was dismissed after investigation. That was before July 6, when they returned to work.

The Court: I am not speaking of any charges before the National Labor Relations Board.

Mr. Andersen: I am talking about the same thing, your [778] Honor.

The Court: You mean the charges in the complaint?

Mr. Andersen: No. I understand that after April 10 and sometime before August they filed a charge against this Union.

The Court: With the National Labor Relations Board?

Mr. Andersen: With the National Labor Relations Board. I understand that was dismissed after investigation, and I understand the reason for it

was because the I.W.A. and the I.L.W.U. were in agreement, and that is the reason it was dismissed. That is why I say the public policy is so clear here. The investigation was made and the charge dismissed. They in effect held there was no unfair labor practice thereby. After July 6, when they returned to work, after that time, the present charge before the National Labor Relations Board was signed, substantially the same thing—the same accusations. It went to hearing, the factual hearing. We are not before the National Labor Relations Board. We are before a Court, and are determining broad questions of public policy. Answering your Honor's questions specifically so far as the first case in effect the National Labor Relations Board held it was against public policy. There was no charge to go to hearing. I ask your Honor to do the same thing.

The Court: What about the second charge? There was a second charge, and you call attention to one. Shouldn't you call attention to the disposition of the other? [779]

Mr. Andersen: The second was filed and went to hearing, and that is what plaintiff bases its case on. I don't want to split this in two parts. I could say to your Honor from April 10 to July 19 their conduct—I couldn't split it in two parts as they did before the Board. I think I would be right if I said that their conduct has been so arrogant, so contrary to public policy, that their original acts vitiate—all of their conduct vitiates the

whole thing right up to the end of the thing, from April 10 until today, not only from April 10 to July 19 when the Woodworkers went back to work. It was started by their own arrogant and intolerant attitude. On April 10 and 9 it was in their power as reasonable people to say, "O.K., I.W.A., you don't want the work; O.K., I.L.W.U., you do. You can have it." What have we a public policy for? They come in court and say that on April 10 they closed down—due to their own arrogance—and ask so much money for every day they were closed down, despite that they were unreasonable. Do they have a right to come into court? It is worse than a gambling debt.

The Court: How do you square your argument with the later finding of the National Labor Relations Board?

Mr. Andersen: At best it only relates to July 19 on, may it please the Court.

The Court: Aren't the factual elements the same?

Mr. Andersen: No, your Honor; as I understand the [780] testimony, April 10 there was a picket line. It is still there, but on July 19—I may be a few days off—the Woodworkers decided to go back to work. Before that situation existed the I.W.A. told the Juneau Spruce to let the Longshoremen do the work.

The Court: You mean on April 10 there was a repudiation by the I.W.A.?

Mr. Andersen: By the I.W.A.; correct, your

Honor. From April 10 until July 19 nobody can gainsay the statement that Juneau Spruce Corporation was arrogant in its attitude and in defiance of the stated purpose of the Taft-Hartley Act. As I stated, the National Labor Relations Board refused to prosecute. It is true on or about July 19 the I.W.A. changed its position and that, for the first time, gave rise to the hearing before the National Labor Relations Board. We do have the two halves of this problem. What I say, may it please the Court, is there can be no question as a matter of public policy, that from April 10 to July 19 Juneau Spruce served arrogant defiance, defiance of the public policy and the Taft-Hartley Act, in their so-called claim against the I.L.W.U., and from the second period out, on the same basis that their original action was so arrogant, so in defiance of public policy, that they themselves prevented a settlement. It was not even a jurisdictional dispute, because there was no jurisdictional dispute. Their own arrogance of April 9, 1948, [781] deprived them of an opportunity to settle that strike, settle that dispute. As a matter of fact, as I say, there wasn't even a dispute. The two Unions were in harmonious agreement. Look at the evidence on April 1—a committee of Longshoremen called on the I.W.A. and waited on them. Before the meeting they talked about this, that and the other thing. The I.W.A. went in and among themselves discussed the whole thing for an hour and then passed that Resolution which is in evidence—"We figure

this work belongs to the Longshoremen." They passed that Resolution. Mr. Flint testified he wrote a letter to the Company saying, "Give the work to the Longshoremen." There were harmonious relations between the two. Who created a jurisdictional dispute? Who, on that basis, created trouble? It could only be the Company. I say the Company cannot unreasonably create and foment a labor dispute, which it did, and then come into this Court, or any Court, and ask for money damages, may it please the Court, and so their conduct goes all the way back to April 10, or rather before, say April 7, 8, 9. It was in their power to amicably settle the dispute at no expense to themselves. What is the Taft-Hartley Act for? Is it to permit a Company to say, "There are two Unions there, but I am only going to do business with one of them. I don't care what the other Union wants or agrees to between themselves, it is immaterial. If you won't do the work I will sue you, and if they insist I will sue them too." Under this, they [782] could have sued the I.W.A., too, with as much reason and logic. The Company here simply decided they were not going to be reasonable under the Taft-Hartley Act and settle this lawsuit. I don't see how else you can look at it. These facts are completely irrefutable.

As far as plaintiff is concerned, it adds up like I have said. All you have to do is read the Resolution and that letter. Mr. Hawkins wouldn't do business. He had a contract with I.W.A. He

wouldn't negotiate with the I.L.W.U., sure, all right. He said, "If we did, maybe the Electricians would want a contract, or maybe the plumbers would want a contract." That is no concern of his. If the electricians wanted to come to him and ask for a contract it is their right. If the carpenters want to come to him and ask for a contract it is their right under the Act, and that applies to every other craft. We have industries with fifteen unions represented in their operations.

The purpose of the Taft-Hartley Act is to insure peaceful labor relations so that industry will not be disturbed. Now, who caused this trouble? Was it the I.W.A. who told the Longshoremen they wanted the Longshoremen to do the work? Was it the Longshoremen who went and said they wanted to do the work over the rail? The Longshoremen went to them and said, "The I.W.A. said we can do the work from the rail out," and the I.W.A. said, "Let them do the work." Where is the dispute? There isn't any. That is what the Company said April 9 and that has been their conduct to the present time.

The Court: You contend the law does not cover the situation as it existed between April 10 and July 19?

Mr. Andersen: The National Labor Relations Board.

The Court: I thought you were opposed to any finding of the National Labor Relations Board in this case?

Mr. Andersen Your Honor, it was only introduced in evidence for——

The Court: You are apparently relying on one for your argument.

Mr. Andersen: Your Honor takes notice of the Taft-Hartley Act. I don't have to prove that, and your Honor doesn't have to be concerned with the National Labor Relations Board, save and except as pleaded in the complaint. In relation to the Taft-Hartley Act, this Court must pass upon the facts in relation to the common principles of law, and that includes the Taft-Hartley Act, whether the National Labor Relations Board proceedings come in or not. Your Honor has a question of law before you.

The Court: You contend the law does not cover the situation as it existed between those two dates?

Mr. Andersen: The first two?

The Court: Yes.

Mr. Andersen: And that was by the fact that the [784] first charge filed against the I.L.W.U. was dismissed. That is extra judicial. For the purpose of this case that is an immaterial matter. The fact that the National Labor Relations Board may have made a determination is immaterial to the suit for damages, save and except as to the limits required by the allegations of the complaint in relation to the Taft-Hartley Act. They have to plead something about the Taft-Hartley Act because the suit is based on the Taft-Hartley Act. The point I am making is that on the Taft-Hartley

Act, as well as on general legal common law principles, they have no right to recover here because it is their own wrong, it is their own fault. That is what I say, and that is the only reason I refer to the Taft-Hartley Act, Section 303, which says under such-and-such circumstances people can sue for money if there is a jurisdictional dispute, may it please the Court.

The Company said they had assigned the work. That is the basis of their action, that the Company had assigned the work. If your Honor will read the Act your Honor will see that when they talked about assigning of work what they had in mind was a jurisdictional dispute, and so they say that if one craft is doing a job and another craft say they want it and they picket, it becomes an unfair labor practice. The first craft has the job and presumably a contract and the second craft says, "We want the contract."

Now, your Honor will recall that during the period [785] of the Wagner Act, there were a great many jurisdictional disputes of that kind. Your Honor will recall statements in the press and of the Congressional hearings. One of the primary things they wanted to do was stop jurisdictional disputes and strikes where one Union wanted the work and would picket. It would close the whole plant. The Company here said, "We assigned the work to the I.W.A." They are saying it is a jurisdictional strike; putting it another way, the facts show there was no jurisdictional strike. There

just wasn't any jurisdictional strike because that means there can't be a jurisdictional strike unless two Unions are competing for a certain type of work, both claiming jurisdiction for it. Short of that, there can't be any strike.

Between the two Unions there was no argument. That is the evidence. I don't believe I have to cavil about that. So, the Company, with no jurisdictional strike, chose to close its plant rather than operate. All they had to do was say to the I.W.A. "If you don't want the work under the contract—it is your benefit, you can always waive the benefit—you want to assign it to the I.L.W.U., but don't complain in the future about it," they would say to the I.W.A. There is no jurisdictional dispute when two Unions are in agreement.

The Taft-Hartley Act was passed and for this litigation its relation to the jurisdictional strike is the—I think it is very clear, may it please the Court. If those are the [786] facts, I say that no employer has the right under the Taft-Hartley Act to say when there was no jurisdictional dispute "Rather than hire Longshoremen I won't operate my plant" and that is in effect what they did, may it please the Court. "And if I can't operate the plant and I lose money under Section 303 of the Act I am going to sue you for damages." That is what the Company said. How are the facts susceptible of any other construction? Are we to follow along the lines of Mr. Hawkins? He said he had a contract with the I.W.A. for them to do

that work. Of course, he didn't have a contract at that time. I don't have to talk about it, it was assumed he had a contract. What sort of two million dollar corporation is this? They have a penny-ante payroll too small to compute. They have a contract with the I.W.A. for millwork and they stand on that contract. It could have been modified with the drop of a hat by saying, "Let the arrangement be that since the I.W.A. doesn't want the work, let the I.L.W.U. do it." Who was hurt? Instead of that the Company closes for a year, payrolls are locked, the Company claims they lost money, and now wants a million dollars from the Longshoremen for something they could have avoided by being reasonable.

It is embodied in the Taft-Hartley Act that they can't bring a labor dispute into full blossom and then come into court and say "We want a million dollars." To join the two halves together, in view of their original arrogance, it [787] prohibits and vitiates all their conduct. Does your Honor have any further questions?

The Court: No. Do you wish to answer that?

Mr. Banfield: Counsel has made a few misstatements. In the matter before the National Labor Relations Board there never was anything dismissed by the Board. This Company made a charge and filed it in the office. The original directors in Seattle who acted on behalf of the general counsel refused to allow the complaint. It was a refusal on the part of the general counsel's

office to issue a complaint. His reason for so doing, he said there weren't two Unions contesting, and his personal opinion, not having a decision of the Board, he felt that it was not a jurisdictional dispute. We told him all along it didn't have to be; it could be a dispute between Longshoremen and the Company, where the Longshoremen told the Company who they had to hire, so nevertheless the general counsel's office persisted in its position, but when the men went back to work we decided to amend the complaint, or that a complaint should be filed—not a complaint but a charge. It is like going to the District Attorney's office and asking to get out a complaint.

This is what the National Labor Relations Board said: "On the record before us, we are satisfied that the conduct that the charge alleges the respondents engaged in, comes within the purview of Section 8(b)(4)(D) of the Amended Act. [788] Accordingly, under the language of Section 10(k)(4) we are 'empowered and directed to hear and determine the dispute' out of which the action arose." That is what happened. The Board does not say one single word about our original charge. It didn't take any notice of it at all, because it had no authority to make the general counsel do anything, but I am convinced that if the general counsel had this opinion in his hand, when we first filed a charge—because he now knows where he stands. We have had counsel interpret public policy. That is the queerest I have ever heard of here in the

United States that in a productive unit, such as a sawmill, the two Unions have a right to set down and figure out the work and serve notice on the employer that that is what he has to do. So many out of this Union for this, and so many out of this one for this, and serve notice on the employer, and if he doesn't he is acting contrary to public policy and has no means of action.

In other words, this Court could not decide whom to hire as Bailiff if a Union decided on some other man. Permitting an employer to hire whom he pleases well prevents discrimination, because of Union affiliation, and it is only on a basis of ability, experience, and so forth. You can't use unionism to determine who you are going to hire, and discriminate because he does or does not belong to a union. An employer hires men. It makes no difference to him what Union [789] they belong to, and that is true in their hiring down there, but where over half of them are represented by one Union, you can make an agreement whereby a Union is the exclusive bargaining unit. Where they give that right, the Electricians' Union can't go down to the plant and say, "You have got to sign a contract with us." In this case counsel said the I.W.A. said, "Give them the work." Are we on the other side of the Iron Curtain? People tell us the ideal unit is sitting in circles and not consulting the employer. That mythical situation hasn't arisen even in Russia. In this country public policy—in the United States—is assigning work to

whomsoever he employs. Once in that work, he can't discriminate against them because they belong to a certain labor organization. The policy of the United States and in the policy we are under, Unions can't split the work and tell the employer whom to hire. You can still run your own business.

Mr. Andersen: As far as the general counsel of the National Labor Relations Board, I think procedurally and factually what he said is correct, but this fact remains: the first complaint where a charge was filed, after an investigation they refused to file a complaint, it wasn't until after the I.W.A. changed their position that the new complaint was filed. The new complaint and then the charge was filed. That was sometime in August, may it please the Court. With respect to the public policy of the law, permit me to read it to your Honor. I think we both know what public policy is.

"Section 1.(a) This Act may be cited as the 'Labor Management Relations Act, 1947.'

"(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

"It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce."

Let me go back and underscore, "that neither party has [791] any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety or interest." So, this first charge was filed by this Company against the Union, an investigation was made and the general counsel, who has a great deal of authority under the Act, much more than a District Attorney—that is only an aside—he dismissed it. There is no question about it. It wasn't until after the I.W.A. changed its stand that the amended complaint was filed to bring in the changed situation where the I.W.A. then claimed to do the work. That was a jurisdictional dispute.

What is public policy? Did I misquote it? I told you what I thought public policy was, as expressed in the Taft-Hartley Act. That Act says

no steps shall be taken "inimical to the general welfare." Labor disputes should be settled peaceably and amicably. That is the public policy of the Act.

May I state it again, the Woodworkers said, "We figure the work belongs to the Longshoremen." There is no argument about that. The Longshoremen contend that they have been doing this work for years. We know loading of waterborne commerce from time immemorial was Longshoremen's work. Even by the Constitution of the Woodworkers—the committee goes to the mill, the employer says, "We are not going to let you adjust it among yourselves. We are going to tell Unions the when and where and why of hiring them." He talks about the [792] Electricians. Certainly they have a right to say, "We want to negotiate a contract with you. We want to carve a unit out of this plant." We don't have any law that says plants must be on an industrial basis. The Taft-Hartley Act encourages the small units and organizations and provides the means, like the United Auto Workers cut in a small place. The Act provides some place that a definable unit can be carved out. They express themselves and are united by themselves.

By what right do these gentlemen say Electricians don't have a right, that the right is given to Mr. Hawkins? He said, "I am not going to have the Electricians talk to us, or the Plumbers, or the Carpenters." By what authority does he arrogate

that? He says, "There is no jurisdictional dispute. We are going to sue for one million dollars."

What is the public policy under the Act, may it please the Court? It couldn't be clearer than that part of the Act which I read, common ordinary decency and common ordinary sense. There was no jurisdictional dispute. There just wasn't any. There was no dispute, may it please the Court. Where is the dispute? How can we imagine a dispute there?

The Court: Wasn't there a dispute before the relinquishment?

Mr. Andersen: No. [793]

The Court: Two Unions claiming the right to that work?

Mr. Andersen: Are you talking about April 10?

The Court: No; I am talking about before April 10.

Mr. Andersen: The situation before April 10 —there was no dispute. There were two Unions, particularly the I.L.W.U., which thought the work should be theirs. What did they do? They acted in accordance with the Taft-Hartley Act, within the spirit and the public policy of the Taft-Hartley Act. They went to the Company and said, "We would like to do this work."

The Court: Why didn't they go to the Company between April 1 and the time of the contract, in November?

Mr. Andersen: They did, your Honor. They first went early in September or October. That is the testimony.

The Court: Wouldn't you say at that time there was a jurisdictional dispute?

Mr. Andersen: No. There was no dispute.

The Court: Both were claiming the right to the same work.

Mr. Andersen: So far as the Taft-Hartley Act is concerned, the dispute is a closely defined thing. It has to be right up to the point of a strike. That is a jurisdictional dispute. There must be cessation of work. Short of that, negotiation or conciliation; no cessation of work. The Taft-Hartley [794] Act was designed to prevent cessation of work. It wants disputes settled. Before April 10 the Longshoremen went to the Company and said they wanted the work. They didn't get a favorable response from the Company, so they went to the Union. They didn't want trouble. They said we have always done it. Even the pre-existing contract is in evidence. They said, "We have always done the work." And the Union—the I.W.A.—agreed with them.

There can be no dispute, may it please the Court, when there is an agreement. There can be no jurisdictional dispute when there is an agreement between the Unions involved. They are mutually exclusive terms, may it please the Court.

The Court: When you spoke of public policy and peaceful relations, it could also be argued it doesn't mean Unions after a contract has been executed, a contract for a bargaining agent. You could be arguing—you are certainly not recogniz-

ing—that you could pick out a subsequent and not an initial dispute, as not being in conformity with the labor policy of the Act. It seems to me your argument cuts both ways.

Mr. Andersen: I don't follow your Honor there, frankly.

The Court: Perhaps it isn't important.

Mr. Andersen: The Taft-Hartley Act is not concerned [705] with what we would call an immediate dispute, that would immediately flare up. The facts here show that in October when they had their first meeting and the Company said they had a contract with the I.W.A., that wasn't correct, that wasn't true. They told them that they already had a contract, when as a matter of fact there was no contract, and that is the evidence by Mr. Schmidt and also by Mr. Flint. They didn't have one until November 3. The Union went to the Company before they had a contract and said they wanted to negotiate a contract. The Company didn't tell the truth. In the letter dated October 18 Mr. Schmidt says the I.W.A. Union turned the contract down. There was none until November 3. The Union went before there was a contract and said, "This work belongs to us. We claim it. We want to negotiate with you for it." That was the testimony of Mr. Schmidt, and he says in the letter, "I stalled them" off. Let me have that letter, please, I would like to read it to your Honor. The letter says "I stalled them" off. That is it. "We presented the Union Contract"—speaking about the I.W.A.—"and it has been turned down by the Un-

ion." He says, "Yesterday the C.I.O. Longshoremen's Union Representative came in and raised a rumpus about us loading the scow for transshipment either to Seattle or Prince Rupert"—this letter is written October 18, "claiming the right to load any cargo over the rail. I brought up the point this was material for our own people, being towed by [796] our own boat. They insisted that it makes no difference." So far they are within the realm of reasonable labor relations arguing back and forth. "I have stalled them until you get back, which at that time I thought would be this week." So, on October 18—your Honor said why didn't they go there before they had a contract—that is irrefutable evidence that the Company had no contract on October 18. That shows there, Mr. Schmidt says "I stalled them" along until next week or so. Your Honor said good labor relations—they went to the Company and said we want to do this work. The Company was stalling them along.

You will recall the other evidence. After the twenty-ninth meeting, they went there before the contract was signed. It wasn't signed until November 3. That is the situation. They did everything reasonably required of them under the Taft-Hartley Act. The employer had it in the palm of his hand to resume operations and, as I say, arrogantly refused to do it, absolutely and contrary to the public policy under the Act. I know of no rule of law which permits people to take advantage of their own wrongdoing.

The Court: Well, at this stage of the case I think the motion should be denied.

(Whereupon Court adjourned until ten o'clock a.m., May 10, 1949, reconvening as per adjournment with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:)

The Court: You may proceed.

DEFENDANT'S CASE

MIKE SESTON

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Roden:

Q. Mr. Seston, will you please state your full name? A. Mike Seston.

Q. And how long have you lived around the town of Juneau? A. About six years.

Q. What has been your occupation principally during that time? A. Miner.

Q. In 1948, the early part of the year, what occupation did you follow?

A. Sawmill worker.

Q. For which sawmill company did you work?

A. Spruce; Juneau Spruce Corporation.

Q. Juneau Spruce Corporation. Do you remember the time, April 1 of 1948? I will take that back. At that time were you a member of the I.W.A.? A. I was. [798]

Q. The International Woodworkers of America?

(Testimony of Mike Seston.)

A. Correct.

Q. How long had you been a member of that organization? A. Since 1944.

Q. And I take it that since 1944 you had been a member of the I.W.A., and had been employed at the Juneau——

A. Juneau Lumber Mill.

Q. At the Juneau Lumber Company's plant, up to the time that the Juneau Spruce Corporation took over, is that right? A. That is right?

Q. And you continued to work for the Juneau Spruce Corporation after that for some time?

A. I did.

Q. Now on the first day of April, 1948, do you remember a meeting being held on that day in which some members of the Longshoremen's Union appeared? Do you remember that meeting?

A. Yes; I remember. That was my first day coming back to work.

Q. Can you tell the Court and jury where that meeting was held?

A. The meeting was held at eight o'clock in the Miners' Hall.

Q. And who called the meeting?

A. Gus Lee, Vice president of the Union.

Q. Gus Lee, the Vice President of the I.W.A.?

A. I.W.A.

Q. And that meeting was actually held, was it?

A. Yes.

Q. Now, before that meeting was held by the

(Testimony of Mike Seston.)

I.W.A., did any members of the Longshoremen's Union appear at your Hall?

A. When the meeting was called to order there was nothing but members present, around fourteen or fifteen members were present.

Q. At the actual meeting, but before the meeting opened was there anybody present who represented the Longshoremen?

A. When it opened there wasn't any longshoremen present in the place.

Q I didn't get that.

A. I said nobody was present except the members of the I.W.A.

Q. But before their meeting took place, was there anybody present except I.W.A. members?

A. Fourteen members.

Q. Fourteen members of the I.W.A., is that right? A. That is right.

Q. Was anybody present there of the longshoremen before your meeting opened?

A. I never noticed anyone.

Q. At that time was there any talk about the loading of barges, at that meeting?

A. When the meeting was established, come to order, they [800] called the longshoremen, being they was downstairs and told them to come up and present their view.

Q. The representatives of the Longshoremen were downstairs in your Hall?

A. That is right.

(Testimony of Mike Sestón.)

Q. And this Hall is a two-story affair?

A. Two-story building.

Q. And you people, that is the I.W.A., met upstairs and some of the Longshoremen were waiting to be called and were downstairs?

A. That is right.

Q. Do you remember who presided? Who was the Chairman?

A. The Chairman was Gus Lee, the Vice President.

Q. Do you know who the Secretary was that night?

A. The Financial Secretary was Gordon Peterson, and I couldn't remember the Recording Secretary.

Q. Was Gus Gustafson the Recording Secretary?

A. I couldn't positively state what is his name.

Q. After your meeting had been called to order, word was sent down to the Longshoremen waiting downstairs to come and appear before the meeting, is that right? A. That is right.

Q. Please tell the Court and jury what happened then.

A. They brought up the question the first thing, I think, George Ford, he was Chairman of the Committee—I think [801] there were four of the Committee present at the time—it was George Ford and I couldn't think of all those names—now—Joe Guy——

(Testimony of Mike Seston.)

Q. And a man named Wheat?

A. And an old man, Wheat, and a fellow by the name of Burgo, I couldn't pronounce his name.

Q. Those were the four members, as I understand you to say, who represented the Longshoremen. Is that right? A. That is right.

Q. State what was said, first of all by the Longshoremen and then by members of the I.W.A.

A. The President called attention of the members at the time that we wanted to hear from the Longshoremen. Gus Lee stated we wanted to hear their story, so the first man on the floor there stated they went down to the Spruce Corporation to see what they could do with the Company to load the barges, equipment in interstate commerce, as it belonged to them, and was a past practice and they had done all that work and that the Company—Mr. Hawkins—wouldn't listen to them, so they come up to the Union; that they wanted to get their sanction and to respect their picket line. They voted on putting a picket line and they was talking for quite a while, three members were talking. One was just sitting listening. I think we were supposed to have three members on the Committee. So we were just listening, the rest of the members. When they got through we assured them we would respect the picket line. [802].

Q. Now, as I understand you to say, these representatives of the Longshoremen were talking about the loading of the barges?

(Testimony of Mike Seston.)

A. That is right.

Q. And that Mr. Hawkins, the Manager of the Juneau Spruce Corporation, would not listen to them or would not talk to them about it? Is that right? A. That is right.

Q. Then what happened?

A. Nothing happened excepting we called to their attention that we would respect the picket line.

Q. Let me put it this way: Those representatives left your meeting, did they?

A. We ordered them out because we got to hold a meeting.

Q. You ordered them out of the Hall?

A. They walked out and we continued with the conducting of the meeting.

Q. When you say "ordered them out" you don't mean that any difficulty had arisen?

A. No. We told them we were going on with the affairs of business.

Q. The meeting was a meeting of the I.W.A.?

A. I.W.A.

Q. What did the I.W.A. do about this situation, if anything?

A. The first thing, the Vice President, he refused to serve as Chairman of the meeting, then the members decided to call for nominations of an officer, of the Chairman or President, and nomination was called. I couldn't tell you who called the nomination. Mr. Flint, he was nominated as Chairman and President for 1948.

(Testimony of Mike Seston.)

Q. Did he take the chair then, that evening?

A. No. He was the main speaker on the subject of the trouble that was supposed to be between the Longshoremen's Union.

Q. He was the main speaker? That is, William Flint? A. Yes.

Q. Who later on became the President of the I.W.A.? A. That is right.

Q. What did you talk about?

A. Well, talked of the thing that involved the sawmill workers to understand where—they talked on the question whereby the sawmill workers would be injured if the Longshoremen put up the picket line, and the same time the question was going on pro and con on the subject and one of the members got up and stated the jurisdiction of the sawmill workers and what is our purpose and work and claimed that our work, according to the ritual of our Constitution of the I.W.A., was from the stump to the finished product. That [804] is as far as we are supposed to handle, that is the jurisdiction of the I.W.A. That is as far as we can go.

Q. That talk was made in connection with an article in your Constitution, is that right?

A. That is right.

Q. Somebody called that to the attention of the meeting; that is correct, isn't it? A. Yes.

Q. Then what was done?

A. Then everyone was expressing an opinion. Some expressed it to prove that the scows and dif-

(Testimony of Mike Seston.)

ferent equipment was used down below like that the lumber to Puget Sound was handled on the barges by the sawmill workers in low inland waters.

Q. Lumber on the barges was handled by members of the I.W.A., if a barge operated on inland water? A. Inland water.

Q. Was anything said about barges operating on the high seas?

A. Another got up and said they had done it in different places in inland water where the lumber workers loaded scows and when the scow went in deep water the handling of the barge was the Longshoremen's.

Q. I understand you to say then that in inland waters the I.W.A. members would load the barge and that barge would go and discharge lumber to a steamer or barge going to the [805] high seas, is that right? A. On the high seas.

Q. At that meeting was there any resolution passed such as contained in exhibit—I show you Defendant's Exhibit No. A. You look at this.

A. My eyesight is not very good.

Q. Let me read it to you.

A. You better read it.

Q. "Special Meeting, April 1, 1948, Discussion Between Labor Committee of I.L.W.U. and those attending meeting relative to loading of barges and ships. Motion made and seconded to go on record to not load barges. We figure this work belongs to the Longshoremen. By a written vote—thirteen members present."

(Testimony of Mike Seston.)

Mr. Andersen: It says "Unanimous," I believe.

Q. Yes. "Thirteen members present—unanimous." Do you remember of anything like that being done that night?

A. Yes, we voted. Fourteen members was present. We had a standing vote. Thirteen was standing up and one was sitting down.

Q. After this meeting and you had taken the action as you have now indicated, did you tell the Longshoremen as to what had happened at your meeting?

A. A committee was appointed to tell the Longshoremen our action. [806]

Q. Do you know of your own knowledge whether or not that committee did inform the Longshoremen? A. Beg pardon?

Q. Do you know yourself whether or not the committee which you people appointed did inform the Longshoremen of your action?

A. I couldn't say.

Q. You couldn't say? All right. Now, then, as I understand you to say that this motion was adopted at the meeting at which fourteen members of the I.W.A. were present, and when the vote was called thirteen stood up voting in favor of it and one remained seated, is that right?

A. Correct.

Q. Now then, was there any meeting held about a week or so after this meeting?

(Testimony of Mike Seston.)

A. A meeting was called on the ninth of April.

Q. Who called that meeting, Mike?

A. It was called by Mr. Flint.

Q. And what was the purpose? Why was that meeting called?

A. The meeting was called on the purpose that a picket line would be established the next day.

Q. You people wanted to consider the situation?

A. Correct.

Q. That meeting was also held at the Union Hall?

A. The Miners' Hall. [807]

Q. How many people were present at that meeting?

A. I would estimate around one hundred and eighty, one hundred and ninety.

Q. Were all these people who were present, were they members of the sawmill workers' Union?

A. They were.

Q. Some may not have been, but were working at the sawmill at the time?

A. If you want me to state in my own words——

Q. Yes, state it in your own words.

A. When the meeting was called to order and it was a large turnout they didn't know if they were all members or not. They were sworn in as members, into the organization at the time so they could take action on the floor. They were sworn in at the time.

Q. All sworn in as members of the I.W.A.?

A. That is right.

(Testimony of Mike Sestan.)

Q. Then tell us what happened then? Who was the officer—the Chairman of the meeting?

A. Mr. Flint.

Q. That is William Flint? A. Yes.

Q. Who was Secretary, if you remember?

A. The Secretary was Gordon Peterson, Financial Secretary. They got a Recording Secretary but I can't think of his [808] name.

Q. Tell the Court and jury what happened at that meeting.

A. The question was on the floor pro and con—different ways—what was going to take place. Mr. Flint announced, or stated what had taken place himself.

Q. Can you tell us what Mr. Flint did say, as a matter of fact?

A. He said—in the first place they read the minutes of the previous meeting.

Q. And that was the meeting of April 1?

A. Of April 1.

Q. That is the minutes which I have read out to you, or did read out to you a moment ago?

A. Yes, that is the same minutes.

Q. Go ahead.

A. The minutes were read and he asked if there was any correction or omission in the minutes. Nobody responded or said anything. The minutes was approved as read. Then they called attention to the members to express their opinion regarding the picket line, what they were going to do about it.

(Testimony of Mike Seston.)

Q. What was that?

A. Different guys had expressed the opinion to respect it. A majority of them expressed it. According to the Constitution of the C.I.O. organization, that we should [809] respect the picket line. It went on for over half an hour, till they called—they put it in a motion to respect the picket line.

Q. At that meeting, I will read to you again from Defendant's Exhibit A, "Special Meeting, April 9, 1948, Discussion on Conditions Relative to I.L.W.U. loading barges. Move made and seconded to take vote on whether to cross picket line—again a unanimous vote to honor picket line of I.L.W.U." Was that kind of resolution or motion adopted that night?

A. The first of April?

Q. I am now on the second meeting, when the question of the picket line——

A. Yes, we voted not to cross the picket line on the ninth.

Q. The ninth of April?

A. The ninth of April.

Q. That is what it says here "Move made and seconded to take vote on whether to cross picket line—again a unanimous vote to honor picket line of I.L.W.U." That is what happened that night, is that right? A. Yes.

Q. And that is the meeting at which Mr. Flint presided himself? A. That is right.

Q. Do you know whether or not the action which

(Testimony of Mike Seston.)

was taken at this meeting of April 9 was communicated to Mr. Hawkins, [810] whether he was advised as to what the I.W.A. had done that night?

A. It was communicated the next morning. A majority of us went down to work like nothing happened, most of us. Nobody went across the picket line. That is all what happened.

Q. The picket line was there?

A. The picket line was there.

Q. And the I.W.A. members recognized it?

A. Recognized it. They never went through the picket line.

Mr. Roden: I think that is all.

Cross-Examination

By Mr. Strayer:

Q. Mr. Seston, on your meeting of April 1, Mr. Ford and Mr. Guy, Mr. Wheat and Mr. Burgo were there. As I understand your testimony they told you this work of loading the barges belonged to them, is that right? A. That is right.

Q. They told you they had always done that work before? A. Yes.

Q. Did they tell you they had a contract with the Company to do that work?

A. A verbal contract, or had a contract. We couldn't prove it ourselves if they had it or not.

Q. Did they tell you they had a contract with the Juneau Spruce Corporation or the old company, the Juneau Lumber Mill?

(Testimony of Mike Seston.)

A. They stated they had a contract with the Juneau Lumber Mill.

Q. And did they say that that contract carried over to the new Company?

A. They did. That is what they stated, that when the Company took it over that labor condition went with it.

Q. They told you then that the new Company, Juneau Spruce Corporation, was bound by that contract they had with the old Company?

A. That is right.

Q. And did they tell you they did this kind of work all up and down the Pacific Coast?

A. The inland water; quite a few places down around Columbia River, Puget Sound and different places—inland water work was done by the sawmill workers.

Q. This is what Mr. Ford told you now?

A. Mr. Ford—I couldn't state if it was Mr. Ford or Mr. Joe Guy, whoever was on the floor they gave their view.

Q. They told you some of this work was done by sawmill workers on inland waters?

A. Yes.

Q. But claimed none was done by sawmill workers on ocean-going barges? [812]

A. They stated that.

Q. Did they tell you they had been certified by the National Labor Relations Board?

A. They stated at that meeting any controversy

(Testimony of Mike Sestonovich)

between Mr. Hawkins and the Longshoremen; they showed to the members of I.W.A. what took place and they asked for support at that time.

Q. They asked for support of their demands at that time? A. Yes.

Q. Did they tell you the I.W.A. Constitution didn't permit you to load barges?

A. They didn't say that; they were not in a position to tell us what the Constitution of the I.W.A. is.

Q. Didn't they get out your I.W.A. Constitution and tell you that your work was only from the stump to the finished product?

A. That was brought out by a member of the I.W.A.

Q. Mr. Ford didn't say anything about that?

A. Not to my knowledge. Mr. Ford had nothing to say regarding it.

Q. Which one was it brought it out?

A. One of the members attending the meeting.

Q. Do you know which member it was?

A. I believe it was Mr. Turner?

Q. Mr. Turner? [813] A. Turner.

Q. Turner. He was a member of the I.W.A.?

A. He was.

Q. And did you have a discussion of the correspondence that you had had with your International I.W.A. about this jurisdiction?

A. We had—that was we communicated with the International Union in Portland, Oregon. When

(Testimony of Mike Seston.)

they brought the question up, what was taking place between the Longshoremen and the Juneau Spruce, that was—I couldn't recall exactly the time, but it was in 1947, in the fall, I believe, on the end of October or the first part of November. That is the first time it was ever brought up.

Q. Did you discuss that correspondence at this meeting on April 1?

A. Yes. It was brought up at the meeting there, what some member brought up, and it was read—correspondence from the International which stated by the International that they understand the situation at Juneau; that they will—that they would advise us to act according to previous practice.

Q. Were you told at this meeting on April 1, Mr. Seston, that this practice of loading lumber on barges was new practice that had never been done before?

A. It was brought up that it was new work which never had [814] been done before in Juneau.

Q. You knew that yourself, too, didn't you?

A. I knew it, that it was new practice.

Q. Was it mentioned at this April meeting that the International of I.W.A. had advised you that if this work was new practice of the Company then the mill crew should put the lumber on the barges?

A. The way I interpreted it, it was stated in answer to our communication that we go according to the last practice, what took place in practice for some time, for a year, is the way we stated

(Testimony of Mike Seston.)

in the correspondence to the International, that Longshoremen would load the barges and boats in interstate commerce.

Q. Was this telegram read to you at your meeting on April 1? A. Telegram?

Q. Let me read a part of this telegram to you, Mr. Seston, and see if it will refresh your memory. This is a telegram from Virgil Burtz, Acting Secretary-Treasurer of I.W.A. at Portland, Oregon, dated October 30, 1947, addressed to Mr. O'Day, who at that time I guess was your Secretary. He says with reference to loading barges "If this is a new practice of the Company then the mill crew should put the lumber from the sheds to shipside and the Longshoremen take it from there and load it with ship gear. The loading of barges, scows, etc., with Company [815] equipment is under our jurisdiction. This is the way it is handled on Pacific Coast. Although we have had minor disputes with Longshoremen over this matter we have always won out." Now, do you recall whether that telegram was read to you at this meeting of April 1?

A. I don't recall that the telegram was read at the time, but it was discussed by the members present.

Q. It was discussed by the members present?

A. Yes.

Q. Was that part of it discussed, about uniform practice of the sawmill workers to do the loading where Company-owned barges were concerned?

(Testimony of Mike Seston.)

A. Everything was discussed from beginning to the end, whatever may involve I.W.A.

Q. Now you said that Mr. Flint made a statement at the meeting. Mr. Seston, did you say that you thought the sawmill workers had better not go through the picket line, is that right?

A. That is right.

Q. You said there might be trouble if you did go through the picket line, is that right?

A. I might say that would be advisable according to the Constitution of the C.I.O., to respect the picket line.

Q. The Constitution of the I.W.A. or C.I.O.?

A. Of the C.I.O. and I.W.A. [816]

Q. Requires you to respect a picket line?

A. Yes.

Q. Was there any talk there about a possibility of violence if you did go through the picket line?

A. It was possible at any stage.

Q. Was that discussed?

A. Discussed it as a possibility that could take place.

Q. Was it discussed that if you did go through the picket line you would be blacklisted and wouldn't be able to get work elsewhere?

A. Yes. That part was discussed, too.

Q. Did those things have an influence in your decision not to go through the picket line?

A. We abided on our oath to respect the picket line.

(Testimony of Mike Seston.)

Q. Did these other matters have any effect on your mind in your decision to respect the picket line? A. Yes.

Q. Is this right, Mr. Seston, that really your decision to respect the picket line was that you wanted to avoid trouble?

A. I didn't get the word "right"—what?

Q. Is the reason you decided to respect the picket line that you wanted to avoid any trouble?

A. That is right.

Q. In other words, you were confronted with a situation here [817] where there was an argument between the Longshoremen and the Company?

A. And the Company.

Q. And you wanted to stay out of it if you could? A. Correct.

Q. And you felt if you crossed the picket line there would be trouble? A. Possibly.

Q. Did you make any attempt to find out from the Company whether the representations of the Longshoremen were true or false?

A. Made to me? I just listened as a member of the I.W.A.

Q. Did your I.W.A. Committee attempt to check the accuracy of those representations?

A. Just that they had contact with the Longshoremen and went down to Mr. Hawkins. That is the only report I heard in the Miners' Hall at the meeting.

Q. Wasn't it reported back to your Union that

(Testimony of Mike Seston.)

the Company had no contract with the Longshoremen.

A. They hadn't come back with any. They just stated what took place between the Committee. I think they went down around the sixth or seventh of April, the combined meeting of 1-16 Longshoremen and I.W.A. Committee.

Q. Wasn't it reported back to you that the Company denied it had any contract with the Longshoremen? [818]

A. That is what they stated at the time. Mr. Hawkins stated they never had any contract except verbal for work for sometime.

Q. You knew that under your contract with the Company, the I.W.A. contract, this new Company recognized the I.W.A. as the exclusive bargaining agent for all of its employees, didn't you?

A. That is right.

Mr. Strayer: That is all.

A. Not for all the work.

Mr. Strayer: Just a moment.

Q. Are you still a member of the I.W.A., Mr. Seston?

A. I am working at the Cold Storage plant. I had to get a withdrawal card.

Q. What kind of work are you doing now?

A. Cold storage.

Q. Are you doing longshore work for the Cold Storage?

A. No. I work for the Cold Storage Company.

(Testimony of Mike Seston.)

Q. Are you a member of the Longshore Union now?

A. I just deposited my withdrawal card from the sawmill workers' Union into the Warehousemen's Union.

Q. You are now a member of the Local I.L.W.U.?

A. Not yet, until they pass on it.

Q. You are a permit man at the present time?

A. Permanent worker. [819]

Q. No, I mean they gave you a permit for you to work down there?

A. A permit, until it goes through Union procedure.

Q. You have an application into the I.L.W.U. for membership in the Local?

A. That is right.

Q. You haven't worked for Juneau Spruce Corporation then since April 9, 1948?

A. April 9, 1948: correct.

Q. When you made the decision not to go through the picket line, your idea, was it not, was to give the Longshoremen a chance to try to get together with the Company?

A. I didn't have any idea, but to bind ourselves according to our Constitution to respect the picket line.

Mr. Strayer: I think that is all.

(Testimony of Mike Seston.)

Redirect Examination

By Mr. Roden:

Q. Now, Mike, you people—you members of the I.W.A., didn't go through the picket line because you adopted a resolution or motion on the first of April to the effect that "We figure" that this work of loading of the barges "belongs to the Longshoremen."

Mr. Strayer: Your Honor please, I think counsel is leading the witness. [820]

Mr. Roden: I am reading from the motion.

Q. Isn't that correct?

Mr. Strayer: I object.

The Court: Repeat the question.

Court Reporter: "Now, Mike, you people—you members of the I.W.A., didn't go through the picket line because you adopted a resolution or motion on the first of April to the effect that 'We figure' that this work of loading of the barges 'belongs to the Longshoremen.'"

The Court: The objection is sustained on the ground that it is leading.

Q. Now then, Mike, tell us why you recognized the picket line?

Mr. Strayer: I think the witness has already testified to that, your Honor.

Mr. Roden: Let him testify to it again.

The Court: If there is any uncertainty about his testimony he may testify about that.

(Testimony of Mike Seston.)

Q. Have you answered? Have you told us, Mike, why you honored the picket line?

A. Because we voted in the Union to adopt a resolution that we will respect the picket line.

Q. And that was not just because you happened to be a Union man, but you had a good reason?

Mr. Strayer: I object to that as leading.

Q. What was the reason for not crossing the picket line, [821] because you said you had passed a resolution to that effect, didn't you; that was the first of April; isn't that correct?

A. The first of April.

Q. Why did you pass the resolution?

A. Because we discussed it according to the code of the sawmill organization to respect the picket line.

Q. Was that the reason?

A. That is the reason.

Mr. Roden: All right. That is all.

(Witness excused.)

GORDON S. PETERSON

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Paul:

Q. Will you state your name, Mr. Peterson?

A. Gordon S. Peterson.

Q. What is your occupation at the present time?

(Testimony of Gordon S. Peterson.)

A. Fisherman.

Q. Have you ever been a member of the International Woodworkers of America, Local M-271?

A. Yes.

Q. Were you a member of that organization on April 1, 1949—1948, pardon me [822]

A. Yes.

Q. Did you occupy any position in the Union?

A. I was Financial Secretary.

Q. Were you working at that time, did you have any employment? Were you working for the plaintiff, the Juneau Spruce Corporation?

A. On April 1, 1948?

Q. Yes, or about that time.

A. Yes, I worked for Juneau Spruce.

Q. Do you recall if there was a meeting of I.W.A. Local M-271 on April 1, 1948?

A. Yes, there was.

Q. Were you at that meeting? A. Yes.

Q. Now, I should like to have you tell us who was present just before the meeting began and during the meeting. First, who was present before the I.W.A. meeting began?

A. There was a committee there from the Longshore Local 16.

Q. Can you name them?

A. There was Joe Guy, Orville Wheat, and I believe it was George Ford.

Q. Anyone else of the Longshoremen?

A. That is all I can remember.

(Testimony of Gordon S. Peterson.)

Q. Now, let's make it clear as to whether the Longshoremen were there during the meeting of the I.W.A., or whether [823] they were there at some other time?

A. Well, they were there before the I.W.A. meeting. They left before we started our meeting.

Q. Whom, from I.W.A., was present while the Longshoremen were present?

A. Well, the membership—I wouldn't be able to tell you all the names. I believe Nels Lee was presiding as President and Gustafson was Recording Secretary, and I was Financial Secretary.

Q. About how many I.W.A. members were present while the Longshoremen were there?

A. If I remember correctly, fourteen.

Q. Do you know what the purpose of the meeting was?

A. Well, the Longshoremen were going to have a committee up there to discuss the jurisdiction of loading the barges, and they said that they were going to establish a picket line at the mill.

Q. Did the Longshoremen make any representations or did they say anything at that meeting, just before the meeting began, I mean? A. Yes.

Q. Tell us what they said.

A. Well, they discussed past practice of loading of barges and ships and so forth at the mill.

Q. You mean this mill here? [824] A. Yes.

Q. Did they name any particular employer, like Juneau Lumber Mill?

(Testimony of Gordon S. Peterson.)

A. I believe they named the Juneau Lumber Mills.

Q. What else did they say about past practices?

A. Well, they said according to past practice it was their work and they were entitled to it.

Q. What else? Was any other representations made by the Longshoremen?

A. Well, I don't believe so. I don't believe there was anything else mentioned.

Q. Did they claim to have a contract with the Juneau Spruce Corporation?

A. With Juneau Spruce Corporation?

Q. Yes. A. No, I don't believe so.

Q. Did they mention anything about working for Juneau Spruce Corporation?

A. Yes; they said they had loaded barges and that they could prove it by withholding statements.

Q. Now, I understand from your testimony that the Longshoremen then retired and I.W.A. formally opened its meeting. Is that correct?

A. That is correct.

Q. Was there any discussion among I.W.A. members after the [825] meeting formally opened with regard to the general situation? A. Yes.

Q. How long did the discussion last?

A. Oh, I wouldn't know exactly how long it lasted. There was quite a bit of discussion.

Q. As much as an hour, two hours, three hours? Make an approximation, fairly close.

A. I would say between three-quarters of an hour and an hour.

(Testimony of Gordon S. Peterson.)

Q. And what did you discuss at that meeting? In other words, repeat what was said, as nearly as you can.

A. Well, we discussed—the discussion was whether we should respect the Longshoremen's jurisdiction in loading barges or whether we shouldn't.

Q. Did you talk about what the Longshoremen had said before the meeting began?

A. Yes, that was entered in the discussion.

Q. Was there any talk about the I.W.A. Constitution? A. Yes.

Q. What was said about that?

A. Well, it was discussed, and the Longshoremen before the meeting had started, claimed that it was their work, and somebody got up and said our jurisdiction went from the tree stump to the finished product, and that that was all. [826]

Q. Was any specific reference made to the Constitution or was this just general talk?

A. I believe that was a specific reference to the Constitution, I believe that is the way it reads.

Q. Was there anything said at that meeting by anyone with reference to practices of barge loading or ship loading on the Pacific Coast, meaning Puget Sound or Columbia River?

A. Yes. There was somebody got up and mentioned or explained how it was done in Puget Sound, I believe.

Q. What did he explain?

A. As near as I can remember now, it was that

(Testimony of Gordon S. Peterson.)

the millworkers loaded these small barges on the rivers down there and that they were in turn towed down to the bay where the steamers—where they could get them to the steamers, and from there on the Longshoremen worked them.

Q. Do you know if there was a motion or resolution passed at that meeting of April 1?

A. Yes.

Q. If I showed you Plaintiff's Exhibit No.—or Defendant's Exhibit No. A for identification, well, it is in evidence, do you think you would be able to say whether this motion was or was not passed at that meeting, calling your attention to the upper part of the document?

A. Yes, I believe that is right. [827]

Q. Was it passed at that meeting of April 1?

A. That is right.

Q. Do you know—first, do you know who made the motion or seconded it?

A. I don't believe I would be able to remember that.

Q. Calling your attention to the motion, is there anything omitted from the motion?

A. Anything omitted from the motion?

Q. Which the meeting acted on. I am not talking about the discussion. Was there anything omitted from the motion as stated by the movant and voted on—you know how a motion is made, someone gets up and makes a motion and his words are supposed to be taken down by the Secretary?

(Testimony of Gordon S. Peterson.)

Mr. Banfield: I think the witness ought to be asked what the motion was, rather than what the Secretary took down.

Mr. Andersen: And, if that is the sense of it.

The Court: It is the duty of the Recording Secretary rather than the Financial Secretary to take down the motion made, and this witness testified he is the Financial Secretary.

Mr. Paul: The Recording Secretary is in Los Angeles and beyond this case.

The Court: I am calling attention to the fact that he probably is not the person who took it down, but if he remembers what it was——

Mr. Paul: That is the sense of my question.

Mr. Banfield: My objection is that he shouldn't ask the question in that manner. What it is—ask the witness what it is.

The Court: Will you repeat the question?

Court Reporter: "Which the meeting acted on. I am not talking about the discussion. Was there anything omitted from the motion as stated by the movant and voted on—you know how a motion is made, someone gets up and makes a motion and his words are supposed to be taken down by the Secretary?"

The Court: You may answer if anything was omitted or not, by yes or no.

Q. Was anything omitted by the person who made the motion when the Recording Secretary took it down, if you know?

(Testimony of Gordon S. Peterson.)

A. I would say no.

Q. Was there any communication ever made as to the action of April 1 to the Juneau Spruce Corporation? A. Will you repeat that?

Q. Was any communication made by I.W.A. to Juneau Spruce Corporation; in other words, did you, the I.W.A., notify the Company of its action?

A. There was a discussion on whether to notify them or not.

Q. We are through with the meeting of April 1. We want to know if Juneau Spruce Corporation was notified of the action taken?

A. Like I say, there was discussion as to whether or not to [829] notify the Company of our action at that meeting.

Q. Did you ever get together with the Company on the subject matter of the meeting of April 1, the motion?

A. I just don't remember whether we did or not.

Q. Calling your attention to the date April 7, 1948, was there—— A. Oh——

Q. Go ahead and answer, was there a committee meeting with the Company on that date?

A. Yes.

Q. And who was present?

A. There was a joint committee meeting of the Longshoremen and Local M-271.

Q. Name those who were present.

A. There was, for Local M-271, I was present and Gustafson was present, and for the Longshore-

(Testimony of Gordon S. Peterson.)

men it was Mr. Joe Guy and Orville Wheat, I believe, and for the Company Mr. Hawkins and Dick Stamm.

Q. This was April 7—about what time of the day?

A. As I recall, I think it was supposed to have been eight in the evening.

Q. Just tell us what went on at that meeting, the conversation as nearly as you can remember it.

A. Mr. Gustafson from our Local M-271, was the first one to get up and break into the meeting, and he stated the [830] reason for the meeting which was to get together with all three parties concerned and try to work out some kind of agreement by which there wouldn't be any work stoppage. That was the point of having that meeting with the management of the mill.

Q. State all the conversation that went on.

A. There were introductions went around, I guess to everyone, and Mr. Hawkins wanted to know what they wanted to talk about, and we introduced the Longshoremen as a joint committee with the Woodworkers, and I don't just remember what one of the Longshoremen asked Mr. Hawkins if he wouldn't be willing to set down to negotiate or something like that, and Mr. Hawkins said he didn't have anything to talk about and it got kind of heated around there and I guess I got up and told Mr. Hawkins that the only reason the Woodworkers were there was to try to avoid a work stoppage,

(Testimony of Gordon S. Peterson.)

and we knew he wanted the mill to run as much as we did. He come back and told me why I thought I wanted the mill to run. I told him it was my own personal opinion, because I didn't want to talk for the Union. He said "You have got a hell of an opinion." I think it was Orville Wheat for the Longshoremen asked Mr. Hawkins, then he said "Then you won't negotiate with us and won't talk this thing over?" Mr. Hawkins said he didn't have anything to talk about. [831]

Q. What happened? Have you related all the conversation that you remember now?

A. It got kind of hot between the Longshoremen and Mr. Hawkins and Mr. Gustafson and I just sitting there, because it was more or less they were talking, and Orville Wheat got disgusted I guess, and grabbed his hat and got up and said "There is nothing more to discuss about. We will have to put the picket line around the plant." Mr. Hawkins said "Go ahead and put it around there," he says, "Go ahead and put the picket line around the plant," he says, and he says "We have got all the answers" or something like that. That was about all there was to the meeting. That is the way it ended. We didn't come to any agreement.

Q. Everybody left? A. Yes.

Q. Calling attention to April 9, was there a meeting of Local M-271 on that evening?

A. Yes.

Q. Were you present? A. Yes.

(Testimony of Gordon S. Peterson.)

Q. Who else was present?

A. William Flint was present and Gustafson was again, I believe, Recording Secretary. I was the Financial Secretary, and between a hundred and eighty and two hundred [832] millmen were there that worked at the mill.

Q. Were they members of I.W.A. or part of them?

A. The majority were members of I.W.A. and I believe when the meeting started some of them there had been signed up but were not initiated, and I believe we held an initiation that night for the rest of those members. I wouldn't swear to it; anyway, they were all millmen and they all voted.

Q. Were there any Longshoremen present during the meeting that you know of? A. No.

Q. Would you have known if there were any Longshoremen present? A. Yes.

Q. Were there any Longshoremen present just before the meeting began? A. On April 9?

Q. Yes. A. I don't think so.

Q. What was the discussion about on the meeting of April 9?

A. It was practically the same meeting of April 1, only on April 1 thirteen members voted to respect the Longshoremen's jurisdiction and there was a lot of hub-bub and dissension down at the mill after that, so Nels Lee—they were going to have a meeting of non-Union members on the [833] Northland Dock or some place—Nels Lee finally called

(Testimony of Gordon S. Peterson.)

a meeting in the Union Hall, so everybody attended and the majority of the men, and the majority of the mill workers, could vote on it and there was——

Q. Was there a vote taken?

A. There was a vote taken; yes.

Q. Do you know what the motion was?

A. The motion was whether to respect the Longshoremen's picket line.

Q. If I showed you a copy of a motion, do you think you would be able to recognize it, calling your attention to the bottom part of Defendant's Exhibit A? A. I believe that is it.

Q. Do you think that was the motion passed at that meeting?

A. Yes, that is the motion.

Q. And do you know what the vote was at that meeting? A. Yes; it was unanimous.

Q. Mr. Peterson, going back now to the meeting of April 7, on the part of I.W.A., was there any statement made to Mr. Hawkins or Mr. Stamm as to any of these motions or the first motion, or anything else that I.W.A. had done?

A. In the April 7 meeting?

Q. Yes.

A. Well, I believe that it was said that after the meeting was over and so there wasn't any hopes for negotiations [834] with Mr. Hawkins, I think Gustafson or myself, I don't remember which, told him that we would have to respect the I.L.W.U. picket line, if it was thrown around the plant.

(Testimony of Gordon S. Peterson.)

Q. Was that the only statement given to Mr. Hawkins? I am asking if the Company was informed of a definite action having already been taken by I.W.A.

A. That was the information of the action of April 1, that we voted to respect their picket line.

Q. Did you tell Mr. Hawkins?

A. On the seventh?

Q. Yes.

A. Yes; he was told on the seventh.

Q. Can you repeat as nearly as possible the words spoken?

A. I can't remember exactly, but to the effect that the Woodworkers would have to respect the picket line if it was thrown around the plant. It hadn't been thrown around the plant yet.

Q. On the meeting of April 9, do you know what time was that held?

A. I believe it was held right after the day shift got off shift, so that the Company was going to give the night shift time to go to the meeting, so I believe it was held right after the day shift. It may have been seven o'clock, between five and seven it started. [835]

Q. The Company was going to give time off for the night shift so the night shift could attend the meeting? A. Yes.

Q. Do you know whether the Company ever gave time off?

Mr. Strayer: It is immaterial. There is no dis-

(Testimony of Gordon S. Peterson.)

pute that the night shift was delayed an hour so the meeting could be held.

The Court: If it is not disputed,——

Mr. Andersen: The Company testified that the men took the time off, but they all made it up the next morning. The Company testified to that. I think this witness will testify slightly different than that. After the meeting April 7 decided to respect the jurisdiction of the Longshoremen in loading barges, then it was at that time the Company changed its mind and said, "You voted not to go to work, now make it up," or words to that effect.

Mr. Strayer: I don't see how that is material.

The Court: I don't either.

Mr. Paul: It goes to the credibility of Mr. Hawkins, affecting his credibility.

The Court: Objection overruled.

Q. Do you know whether the Company ever did give the night shift time off or whether they had to make it up later on?

A. They were supposed to—the Company agreed—— [836]

Mr. Strayer: I object. I have no objection to conversation, but not a conclusion of what somebody was supposed to do.

The Court: He should answer that yes or no.

A. The question again?

Mr. Paul: As I stated it, he can't answer yes or no.

The Court: Will you repeat the question?

Court Reporter: "Do you know whether the

(Testimony of Gordon S. Peterson.)

Company ever did give the night shift time off or whether they had to make it up later on?"

The Court: Why couldn't he answer that at least that he knows?

Q. Do you know? A. Yes, I know.

Q. What do you know?

A. They had to make it up the next morning.

Mr. Andersen: May I ask one question?

The Court: Yes.

Mr. Andersen: After your meeting April 1 where you voted to respect the jurisdiction of the Longshoremen, you had a meeting with Mr. Hawkins of the Juneau Lumber—Juneau Spruce Company on April 7; that is correct, is it?

A. Yes.

Mr. Andersen: At that meeting, did you advise Mr. Hawkins of the meeting, of the action that your Union had [837] taken?

Mr. Strayer: That has already been gone into.

The Court: He testified that they did.

Mr. Andersen: The question I was going to ask was if they advised him of the action of the meeting April 1; I didn't think it had been answered. Thank you, sir.

Mr. Paul: That is all.

Cross-Examination

By Mr. Banfield:

Q. Mr. Peterson, when did you first start work at the Juneau Spruce Corporation?

A. August 14, 1947.

(Testimony of Gordon S. Peterson.)

Q. You were there at the time the I.W.A. made a contract with the Juneau Spruce Corporation on November 3, 1947, weren't you?

A. Well,—just a minute. Did I say 1947? August 14, 1947?

Q. Yes.

The Court: Yes.

Q. The strike was in April, 1948; maybe that will orient you.

A. I was there August 14, 1947.

Q. You were there, working at the plant, at the time the I.W.A. made a contract with the Juneau Spruce Corporation to be the exclusive bargaining agency for the Corporation, were you not? [838]

A. That contract was made before I was there, wasn't it? You mean the agreement we work under today?

Q. It was signed November 3 of 1947. It had been negotiated—parts of it—from time to time before that, but it was signed on that date.

Mr. Paul: I object to this line of questioning.

Mr. Banfield: What I want to know is how long he was there.

The Court: Objection overruled.

Q. Did you work continuously from August 14, 1947, to October, 1948? A. Yes.

Q. You were there when the barge was loaded in October?

A. I am not too familiar with the barge loading. My job is at the head end of the mill.

Q. But you were employed there?

(Testimony of Gordon S. Peterson.)

A. I was employed there.

Q. You knew the barge was being loaded?

A. Yes; I knew there was a barge out there being loaded.

Mr. Paul: I think I will renew my objection. It is improper cross-examination. Counsel stated he was asking the question for the purpose of learning how long he worked there, and dragging in all the rest of this is not properly reflecting that, if that is what he wants to know. I think the question has been asked and answered. [839]

The Court: Didn't he testify on direct with reference to barge loading?

Mr. Paul: Yes; he said April 1 barge loading was discussed. The cross-examination is limited to the discussion referring to past practice of barge loading.

The Court: That would depend what he testified to as past practice. If he testified to anything with regard to past practice as to barge loading, the cross-examination wouldn't be limited to a discussion of the meeting, as far as barge loading is concerned. I don't remember the extent to which he testified with reference to the practice of barge loading. If mention of it merely came in incidentally at the meeting, why of course it would be improper cross-examination.

Mr. Banfield: If the Court please, I can state what the testimony was and what I am trying to get at. The testimony was that the Longshoremen stated they had done barge loading, and after that

(Testimony of Gordon S. Peterson.)

representation the I.W.A. took action. What I am trying to get at is why they took the action, why this witness took that action in spite of the fact that he knew that it had not been past practice.

Mr. Paul: I will withdraw the objection.

The Court: Proceed.

Q. You knew another barge was loaded after the one in October, didn't you? A. Yes. [840]

Q. And you knew there was one loaded early in April? A. Yes.

Q. And the Longshoremen represented that they had done all the barge loading at this plant, is that correct? A. Of that type; yes.

Q. You said they presented you with some withholding slips. Did they have withholding slips dated later than October 7, 1947?

A. They didn't present me with any withholding slips. They merely stated they could. I don't know when they gave it to them.

Q. Did they show you any contract with the Juneau Lumber Mill? A. No.

Q. Did they state that they could?

A. They said they had an agreement with the Juneau Lumber Mill.

Q. But they didn't show it to you?

A. No.

Q. Did they say this agreement carried over to the new Company?

A. I believe they did.

Q. Did they show you anything in writing to that effect? A. No.

(Testimony of Gordon S. Peterson.)

Q. Did they tell you that they had been certified by the [841] National Labor Relations Board for this work?

A. No, they never said anything like that.

Q. You don't remember that? Now, Mr. Peterson, you voted on this motion, did you not?

A. What motion?

Q. With respect to the picket line.

A. Yes.

Q. How did you vote on that?

A. It was a secret ballot.

Q. How did you vote on it?

A. Am I required to answer that?

The Court: I guess you are.

A. I voted to respect the picket line.

Q. And thirteen others did, too?

A. One didn't.

Q. Wasn't this a standing vote? A. No.

Q. Are you sure? You don't remember that thirteen men stood up and one man sat down—you don't remember that?

A. I wouldn't be sure of that, but I was under the impression that it was a secret ballot.

Q. What was your impression of voting to respect the picket line?

A. I am a Union man and I don't like to go through a picket line. [842]

Q. There is kind of an unwritten law that no Union will go through the picket line of another Union; is that true?

(Testimony of Gordon S. Peterson.)

A. Well, yes; in a sense it is an unwritten law, and I believe it wasn't our work in the first place, and always have. I believe everybody knows that.

Q. You knew the Company's contract of November 3 had a provision in it that they were not required to go through a picket line?

A. Yes.

Q. Therefore, the Company couldn't call it a violation of the contract? A. No.

Q. Why is it that you find these picket lines so sacred, you wouldn't go through it whether it was legal or not legal?

Mr. Andersen: I object to that as argumentative.

The Court: Yes; objection sustained.

Q. Why did you not go through the picket line?

A. I believe it is a legitimate picket line and I believe it is the Longshoremen's work, is the reason.

Q. No other reason? A. No.

Q. Do you remember the meeting in the City Hall and remember Mr. Roden was the referee?

A. Yes.

Q. It was to determine whether or not you were to have [843] Unemployment Compensation checks?

A. Yes.

Q. Do you remember you were sworn at that time to testify? A. Yes.

Q. Let me ask if at that time you were asked this question and you answered "Why did you with-

(Testimony of Gordon S. Peterson.)

draw your labor? There is no dispute existing between your organization and the Juneau Spruce Corporation?" You said "No." "Why did you withdraw your labor?" That question was asked by Mr. Burtz. Your reply was "As far as I a concerned, fear of reprisal or even bodily harm for attempting to go through the thing set up there now, and which might even be reflected on our children in years to come. I don't feel that I can go through a picket line of that nature for that reason." Did you so answer that question?

A. I believe I did.

Q. Mr. Burtz asked you "Do you think it would be dangerous?" Do you remember your answer to that?

A. I don't remember.

Q. Let me refresh your memory. Did you answer that question "I wouldn't want to take the chance myself. I think it would be dangerous."

A. I believe it would, possibly.

Q. Now, the question was asked of you as to what was the policy of the I.W.A. at that time. In other words, why [844] it was that the organization decided to respect this picket line. Do you know now what the reason was, why the I.W.A. respected the picket line?

A. They respected the picket line. Why they respected the picket line?

Q. Yes.

A. They respected—the I.W.A. policy?

Q. Yes. Why did the organization decide to respect the picket line?

(Testimony of Gordon S. Peterson.)

A. You mean Local M-271?

Q. Yes.

A. Because they figured it was the Longshoremen's work.

Q. No other reason?

A. Well, they figured it was a legitimate picket line and that it was the Longshoremen's picket line.

Q. And that they couldn't go through the picket line, isn't that true, that you just don't do such things—isn't that the reason?

A. It just depends upon the picket line.

Q. It depends upon the picket line. Do you remember you attended a hearing before Mr. Melton Boyd on September 23, 1948, in the Senate Chambers of this building, at which you were sworn to testify; do you remember that? A: Yes.

Q. Do you remember that you were sworn to tell the truth? A. Yes. [845]

Q. Now, at that time Mr. Boyd was questioning you and he said this "Now in order that I may fairly appraise your answers, is it your position that Local M-271, by its action, was intending to and it was its avowed purpose to establish the jurisdiction of Local 16, or was its purpose to respect the picket line to permit Local 16 to establish its own jurisdiction?" Do you remember what you answered to that?

A. No, I don't recall how I answered.

Q. I will ask you the same question now and

(Testimony of Gordon S. Peterson.)

see how you answer it. Mr. Peterson, is it your position that Local M-271, by its action, was intending to and it was its avowed purpose to establish the jurisdiction of Local 16, or was its purpose to respect the picket line to permit Local 16 to establish its own jurisdiction?

Mr. Andersen: May it please the Court, I am going to object to the manner in which the questioning is being done. I think the rule is to show the questions and answers to the witness.

Mr. Banfield: I will, if he requests it.

Mr. Andersen: We usually make the request.

Mr. Banfield: Go ahead.

Mr. Andersen: Do you think I am objecting to hear myself talk? May it please the Court, I think the Court [846] understands the purport of what is occurring.

The Court: If the witness is questioned from anything in writing, the rule is that it must be shown to him. Counsel get around that by asking a question in writing without informing the witness it is in writing.

Mr. Andersen: When I tried on cross-examination the Court——

The Court: I haven't ruled yet. In this case it appears that the examination was asked from the record, therefore I think it would be within the rule.

Mr. Andersen: What page is it, counsel?

Mr. Banfield: Page 506 of the record.

(Testimony of Gordon S. Peterson.)

(Whereupon counsel for the plaintiff showed a document to the witness on the stand.)

Mr. Andersen: What lines do you refer to, Mr. Banfield?

Mr. Banfield: They aren't numbered, but it is about halfway down the page.

Q. Now, Mr. Peterson, which was it? What was the purpose of M-271? Was the purpose to establish the jurisdiction for the Longshoremen or to let them try and do it themselves?

Mr. Andersen: May it please the Court, I am going to object to that, so far as this document is concerned. If the purpose is to impeach the witness, if that is the purpose [847] of this thing——

Mr. Banfield: No.

Mr. Andersen: May I finish my statement, please?

Mr. Banfield: Yes.

Mr. Andersen: If it is to establish the fact, as counsel puts it, then what he testified on the sixth is immaterial, unless he wishes it for impeachment purposes. Apparently he doesn't want it for impeachment. What is contained on page 506 of this record becomes immaterial unless it is for impeachment.

The Court: I have forgotten the question. Read the question.

Court Reporter: "Now, Mr. Peterson, which was it? What was the purpose of M-271? Was the purpose to establish the jurisdiction for the Long-

(Testimony of Gordon S. Peterson.)

shoremen or to let themselves try and do it themselves?"

The Court: Objection overruled.

Mr. Andersen: I am going to make the further objection, may it please the Court, that it simply calls for a conclusion and opinion of the witness. I will withdraw the objection and stipulate he may read the page if he wishes.

Q. Go ahead.

A. I wonder if you would state that over again?

Q. What was the purpose of M-271 in taking this action to respect the picket line? Was its purpose to establish the [848] jurisdiction of Local 16 or to allow Local 16 to deal with the Company and establish its own jurisdiction?

Mr. Andersen: May it please the Court, that assumes something that isn't in evidence and is not proper cross-examination. This witness isn't required to say there was a purpose. The record shows there may have been several purposes that M-271 voted to respect the jurisdiction of the Longshoremen. The record shows several.

The Court: It is legitimate cross-examination. Objection overruled.

Mr. Andersen: I think it is improper when there are several reasons to make the witness say there is only one.

The Court: He isn't compelled to answer that there is one.

Mr. Andersen: I submit the question does. That is why I object to the form of the question.

(Testimony of Gordon S. Peterson.)

The Court: Objection overruled.

Q. What purpose was it?

A. Well, it was the purpose to let the Longshoremen establish their own jurisdiction. We wanted to stay out of the trouble.

Q. That is why——.

Mr. Andersen: Have you finished your answer, sir?

A. Yes.

Q. All right. Now, Mr. Peterson, did you testify as follows [849] at the National Labor Relations Board hearing——

Mr. Andersen: Again I make an objection.

Q. "We just did not want to dispute with them. In order not to dispute with them we would not cross their picket line. That is my idea of it."?

Mr. Andersen: I should think counsel would stop talking while I am objecting.

Mr. Banfield: If you wait for me to finish the question——

Mr. Andersen: I suggest that counsel, before he reads stuff, show it to the witness, and maybe we can get along.

The Court: The witness wouldn't know what he was talking about if he didn't state the question first.

Mr. Andersen: All he has to do is hand it to him.

The Court: Whether he points with his finger or states it—there is one of two methods.

(Testimony of Gordon S. Peterson.)

Mr. Andersen: What page do you refer to? The same page? I will stipulate he can read it.

Q. Was that your testimony, Mr. Peterson?

A. Yes, that was my testimony.

Q. What was your answer? Was that the way you testified? A. Yes.

The Court: I don't think it appears in the record even what the question was. [850]

Mr. Banfield: I don't believe it does, after all that.

The Court: I think the jury is entitled to know what it is.

Mr. Banfield: The question was, Mr. Peterson, did you testify at the National Labor Relations Board hearing "We just did not want to dispute with them. In order not to dispute with them we would not cross their picket line. That is my idea of it."

A. Yes, it is there.

Q. Is it also true that at that hearing you testified as follows——

Mr. Andersen: What page, counsel?

Q. 509. Question: "All right. But you were willing that the Company hire Longshoremen to do the work if it would avoid trouble." And was your answer to that question "Yes"? A. Yes.

Q. Now, Mr. Peterson, isn't it a fact that M-271 took this action because they knew that it would be a reflection on them if they went through a picket line and because they were willing to let the Longshoremen establish their own jurisdiction?

(Testimony of Gordon S. Peterson.)

Mr. Andersen: I am going to object to that question as complex. There are two questions in the one question.

Mr. Banfield: I shall withdraw the question.

Q. Mr. Peterson, isn't it a fact that Local M-271 took this action first because as Union men they knew that there would be a reflection on them if they crossed the picket line?

A. Well, that would be one reason; yes—not the only one.

Q. And another reason was that they were afraid that there might be trouble? Is that right?

Mr. Andersen: I am going to object to the question as indefinite.

The Court: It is rather indefinite, but it is cross-examination. If the witness finds it too indefinite he can say that.

Q. Wasn't that the reason?

A. Will you state it again?

Q. Did not M-271 take the action to respect the picket line partly because they felt there would be trouble?

A. Yes, partly because they thought there would be trouble.

Q. And partly because the Longshoremen represented they had a contract with Juneau Spruce that carried over from Juneau Lumber Mills; isn't that right?

A. I wouldn't say exactly that. It was past practice and we felt it was their work.

(Testimony of Gordon S. Peterson.)

Q. You felt it was their work? A. Yes.

Q. Because they said so? [852] A. No.

Q. Did you feel that employees have a right to tell the employer who he is to hire? Is that one of your reasons? A. No.

Mr. Andersen: I object to that as argumentative.

The Court: What was that question?

Court Reporter: "Did you feel that employees have a right to tell the employer who he is to hire? Is that one of your reasons?"

A. No.

Q. You don't think then that it would be proper for the Longshoremen's Union to go down to the Company and demand they be assigned to certain work assigned to somebody else?

Mr. Andersen: I object to that as calling for a conclusion and opinion of the witness. It is improper cross-examination and argument, may it please the Court.

Mr. Banfield: If the Court please, I am trying to get to the basis of why they refused to go through the picket line.

The Court: Will you repeat the question?

Court Reporter: "You don't think then that it would be proper for the Longshoremen's Union to go down to the Company and demand they be assigned to certain work assigned to somebody else?"

The Court: I think an opinion of the witness on [853] that is immaterial. Objection sustained.

(Testimony of Gordon S. Peterson.)

Mr. Peterson, you said this was legitimate longshore work, didn't you?

A. That is what I feel it is; yes.

Q. By what right do you feel they have a right to do this work?

Mr. Andersen: That is only argument, may it please the Court.

The Court: Well, it seems to me it is somewhat like the previous question. It involves the personal opinion of the witness rather than takes in what the I.W.A. did or acted on.

Mr. Strayer: The only thing is, he testified that one of the reasons they decided to respect the picket line was because it was their belief the Longshoremen were entitled to the work. It seems to me we are entitled to develop the reasons for that belief.

The Court: I am wondering about the propriety. Repeat the last question.

Court Reporter: "By what right do you feel they have a right to do this work?"

The Court: Well, perhaps it is proper in view of his answers. Objection overruled.

Q. Look over here, Mr. Peterson——

Mr. Andersen: I guess he got that habit from your [854] witnesses, counsel.

A. I feel—this is my personal opinion—I feel it is the Longshoremen's work in view of the fact that they were ocean-going scows or barges. They were intending to send them out of Alaska to Canada and the United States, which is interstate commerce, and

(Testimony of Gordon S. Peterson.)

I believe it states somewhere in the Longshoremen's Constitution that anything pertaining to interstate commerce belongs to them.

Q. You think if they put a provision in their Constitution that means the employer must do it?

Mr. Andersen: I object.

Q. Do you believe that the Juneau Spruce Corporation should have the right to hire you to do that work?

Mr. Andersen: Just a moment. I object. It is argumentative.

The Court: I think the objection will be sustained.

Q. On what does this belief that they are entitled to the work rest?

Mr. Andersen: I object to that as calling for a conclusion and opinion of the witness.

The Court: Objection overruled.

A. What was the question again?

Q. You stated, Mr. Peterson, you felt the Longshoremen had a right to this work?

A. Yes. [855]

Q. Where does this right come from?

Mr. Andersen: I submit, the question has been asked and answered several times. The witness just stated he felt it belonged to them, it was his personal opinion, because it was ocean-going cargo.

The Court: Objection overruled.

Q. What is this right based on?

A. Well, longshoremen are longshoremen, and

(Testimony of Gordon S. Peterson.)

they have—their work consists of loading or unloading ships or barges or anything like that that has to do with work from the bullrail out. I couldn't be technical on it.

Q. You feel that only members of Local 16 should be permitted to do that work in Juneau?

Mr. Andersen: I object to that as calling for an opinion and conclusion of the witness.

The Court: Objection overruled.

A. I feel that it isn't our work, it isn't the Woodworkers' work.

Q. Do you feel an employer has a right to hire men and assign them to that job?

Mr. Andersen: That is argumentative, may it please the Court, and calls for a conclusion and opinion of the witness.

The Court: Yes; I think so.

Q. Have you done any longshore work in Juneau? [856]

Mr. Andersen: I object to that as improper cross-examination.

The Court: Objection overruled.

A. I worked one boat, I believe.

Q. One boat? A. Yes.

Q. When was that?

A. I don't remember exactly.

Q. Since the strike occurred? A. Yes.

Q. Mr. Peterson, isn't it a fact that when the Longshoremen were associating with the I.W.A. immediately prior to the time the picket line was established, they promised the I.W.A. men, if they

(Testimony of Gordon S. Peterson)

were out of work, they would put them on as extra men longshoring?

A. That if any of the I.W.A. men were out of work that they would put them extra?

Q. Didn't they promise the I.W.A. men if they were out of work they would put them on as extra men longshoring during the period of the strike?

A. They said they would help them all they could.

Q. Was that the kind of help they indicated they would give?

A. What kind of help is that?

Q. By allowing them work as extra men for the steamship companies? Was that the kind of help and work they offered [857] to give you?

A. Yes.

Q. Isn't it a fact you were the only I.W.A. man who ever got extra work there? You were the only one? A. No.

Mr. Andersen: I object.

The Court: Objection overruled.

Q. What others?

A. I wouldn't be able to say all of the others, but I know I am not the only one.

Q. You don't know the names? A. No.

Q. And you worked on only one boat?

A. I could have had more. I went to work for the Duck Creek Logging Company in the mill.

Q. The Longshoremen would have kept you on longshoring?

(Testimony of Gordon S. Peterson.)

A. I don't know, I have to take my turn.

Q. You go on the wheel and rotate with them, isn't that true? A. Yes, I imagine.

Q. Any time your name got to the top of the list you would be put on there, wouldn't you?

Mr. Andersen: That is only argumentative.

Mr. Banfield: I am showing the witness's interest, may it please the Court.

The Court: Objection overruled.

Q. Isn't it true? [858]

A. I believe that is the way they were working it.

(Whereupon the jury was duly admonished and Court adjourned until two o'clock p.m. May 10, 1949, reconvening as per adjournment, with all parties present as heretofore and the jury all present in the box; whereupon the witness Gordon S. Peterson resumed the witness stand and the cross-examination by Mr. Banfield was continued as follows:)

Q. Mr. Peterson, how many meetings did you have with the representatives of the Company between April the first and the time the picket line went on?

A. With the representatives of the Company?

Q. Yes. A. Just one, that I know of.

Q. Was there a meeting that you attended immediately before the picket line went on, that is the day before—were you present at a meeting?

A. A meeting with the Company?

Q. Yes.

(Testimony of Gordon S. Peterson.)

A. I don't recall any meeting the day before the picket line.

Q. Maybe this will refresh your memory. There has been testimony here from several witnesses that a meeting was held in which Mr. Hawkins was present and representatives of Local 16 and Local M-271, and they have been to the effect that this meeting was on April 9, the day before the strike. Your testimony this morning was, as I remember it, that there was a meeting on the evening of the seventh or the eighth?

A. As near as I can remember it was in the evening of the seventh; at least we asked for a meeting in the evening.

Q. Could it be the other, which was testified to by the others, in the daytime around noon on the ninth and at which they discussed having another meeting that night?

A. I wasn't present at it, if there was such a meeting. I don't recall any such a meeting.

Q. Were there members of the Longshoremen's Union present, which you think was the meeting of the seventh or eighth? A. The seventh; yes.

Q. Do you remember which ones they were?

A. Orville Wheat and Joe Guy.

Q. Well, do you know whether or not there was another meeting on the seventh?

A. I don't recall any meeting—with the Company, you mean?

Q. Yes, in the Company office, with Mr. Hawkins and Mr. Stamm.

(Testimony of Gordon S. Peterson.)

A. No, the only meeting I know of on the ninth was our meeting in the Union Hall.

Q. Were you present when they asked Mr. Hawkins if they could use the drying shed for a meeting?

A. No, but I heard they were trying to get a meeting in the dry shed on the Northland Dock.

Q. Then it was decided later to hold it in the Union Hall? [860] A. Yes.

Q. And it was held in the Union Hall, was it not? A. Yes.

Q. On this meeting, you stated that you went there with another representative of M-271 and representatives of the Longshoremen's Union and a representative of the Company. Did Mr. Hawkins tell you at that time that his Company had an agreement with M-271 which made it the exclusive bargaining agent for all the workers?

A. I don't remember for sure whether he said they had an exclusive bargaining agreement with M-271 or not, but he mentioned something—he always did imply that we were the sole bargaining agent for that work, but it was never written into the contract.

Q. It never was written into the contract?

A. No.

Q. Do you remember at that meeting that he told you that he insisted upon the I.W.A. men doing this work because it was in the contract?

A. Because what?

(Testimony of Gordon S. Peterson.)

Q. Because it was in the contract.

A. No, I don't recall anything like that.

Q. Do you remember him stating that he did not have any contract with the Longshoremen?

A. No, I wouldn't say he said that. He said he wouldn't have [861] anything to do with the Longshoremen.

Q. Wasn't that after he had told you that he had no contract with them, but did have one with the I.W.A.?

A. No; he didn't say anything like that.

Q. In other words, you don't know what was said first, and what was said afterwards?

A. I don't get you.

Q. You don't know the order in which these various points were brought up?

A. Yes, I think I know most of them.

Q. Tell us what was said when the conversation opened, after the introductions.

A. In the meeting with the Longshoremen and the Company?

Q. Yes. A. On the seventh?

Q. Yes.

A. Well, like I said before, I think Gustafson was the first one to say anything and he stated why we were all there, that in order to avoid a work stoppage and like you say, the introductions were first, and Mr. Hawkins knew that they were Longshoremen and he let us in and we met and Gustafson explained that we were there to try to come to some agreement by which the mill could continue

(Testimony of Gordon S. Peterson.)

operations, while they settled whatever differences there were with the Longshoremen, and all we were interested in was keeping [862] the mill running.

Q. The I.W.A. men sat back and let the Company and the Longshoremen do the talking?

A. After that initial introduction, like I told you before, it got pretty hot between Mr. Hawkins and somewhere in that heated argument between the Longshoremen and Mr. Hawkins, like I stated before—the only recourse of the Woodworkers was to prevent a work stoppage, so our members could work, and for the benefit of the community—I don't know what all.

Q. How long were you in this meeting?

A. Not very long, I would say a minute—oh, I wouldn't—I would say three-quarters of an hour probably, altogether.

Q. There was quite a bit of discussion?

A. Quite a bit of discussion.

Q. Quite a bit of discussion before there was any heated discussion, isn't that true?

A. Well, when Gustafson opened the meeting and stated why we were there and that he wanted—I can't recall his exact words—but something to the effect that we didn't want to see the mill shut down, and we would like to see them negotiate, sit down in good faith and negotiate with the Longshoremen because we didn't figure they even knew what they really did want. There were a lot of rumors around. He wouldn't sit and talk. He told

(Testimony of Gordon S. Peterson.)

the Longshoremen [863] that were there he didn't have anything to talk about.

Q. In so many words—nothing he wanted to talk to them about?

A. That is right.

Q. As a matter, you were there about half an hour before there was any exchange of words in an antagonistic manner?

A. I couldn't say exactly. It wouldn't be over a half hour.

Q. This flare-up came at the end, isn't that true?

A. Yes; it kept building up toward the end.

Q. The Longshoremen kept insisting they be hired, isn't that true?

A. At that time all the Longshoremen were insisting upon at that meeting would be to sit down and talk the thing over with them, negotiate in good faith, both parties, in order to avoid a work stoppage. He kept insisting he didn't have anything to talk about.

Q. And he didn't want to negotiate with them?

A. That is right.

Mr. Banfield: That is all.

Mr. Andersen: That is all. Thank you, Mr. Peterson.

(Witness excused.) [864]

GLEN JAMES KIRKHAM

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Andersen:

Q. What is your name, sir?

A. Glen James Kirkham.

Q. I understand you are the son of Mr. Kirkham who testified here the other day?

A. Yes, sir.

Q. Have you been employed at the Juneau Spruce Corporation?

A. I was employed, yes.

Q. How long were you employed?

A. Oh, from just before the Spruce took over up until the time of the strike.

Q. Up until the time of the strike. Were you there during the time Mr. Hawkins was there?

A. Yes, I was there when he came up.

Q. I assume that sometime during the time that you were there there was negotiations? By the way, you belonged to the I.W.A. there, didn't you?

A. I did.

Q. Were you aware of the fact that sometime after Mr. Hawkins arrived there were negotiations of some kind pending between your Union, the Woodworkers, and the Juneau Spruce Corporation? [865]

A. Yes, there was.

Q. During that time do you recall having a conversation with Mr. Hawkins regarding Unions and

(Testimony of Glen James Kirkham.)

Union contracts in general? Do you recall such a conversation?

A. Yes. We had that out a few times right on the job.

Q. Right on the job?

A. And a few times when a man would talk about the Union he made a statement that he was going to bust all the Unions because he didn't believe in them.

Q. Mr. Hawkins? A. Yes.

Q. And who was present?

A. I believe my Dad was President of the Union.

Q. Who was present at that time?

A. I wouldn't know the exact time, but it was out in the yard it happened.

Q. Could you tell about what time it was?

A. I would say about a month after he got there.

Q. About a month after he got there, he said he was going to bust the Unions?

A. He said he was going to bust our Union up and didn't believe in Unions.

Mr. Banfield: He started with a conversation; now he makes reference to what they told him. I would like to know if it is hearsay. [866]

Q. At this time you mentioned, about a month after Mr. Hawkins arrived, did you hear Mr. Hawkins personally say that? A. Yes.

Q. And he said he was going to break every Union in Juneau?

(Testimony of Glen James Kirkham.)

Mr. Banfield: That is leading and suggestive, and not what the witness testified.

Q. Again, state what Mr. Hawkins at that time said.

A. He merely stated he didn't believe in Unions and that he was going to break our Union.

Q. Did he refer to any other?

A. He said any unions that came in contact with him.

Mr. Andersen: You may cross-examine.

Cross-Examination

By Mr. Banfield:

Q. Where did that conversation occur?

A. Down at the Juneau Spruce Yard.

Q. What part? A. The back part.

Q. The back part, what we call——

A. The rear part, back where the warehouse and machine shop is, where we stack the lumber.

Q. And who was present at the time?

A. There was Hawkins and his brother-in-law, the younger one— [867]. I don't remember his name—and there was one other fellow—I don't remember his name for sure—he was there about a week, and he was the one that was having the trouble.

Q. Were you there for the whole conversation or just part?

A. I was there at the beginning. I was Steward for the Woodworkers' Union and he came to me

(Testimony of Glen James Kirkham.)

about some trouble he had been having about wages.

Q. And the man and you were taking it up with Mr. Hawkins?

A. Yes, taking it up with Mr. Hawkins.

Q. Were you ever on any negotiating committees with Mr. Hawkins? A. No.

Q. You say you were Shop Steward?

A. Yes.

Q. You weren't in on various conversations with Mr. Hawkins from time to time, were you?

A. No.

Q. Do you know for a fact Mr. Hawkins dealt with the Shop Committee from time to time on numerous problems?

A. I don't know anything about it.

Q. All you know is one conversation?

A. This man was in my department.

Q. Do you know what time of year it was?

A. I know it was about a month after he got there, it would [868] be in about May or June.

Q. Somewhere around the first of June?

A. Somewheres around in there.

Q. Do you remember the name of the man who made this statement? A. Not that one.

Q. You don't know the one you were representing? A. No.

Q. You don't know the name of the other man, the man's name besides Mr. Hawkins?

A. One of Hawkin's brothers-in-law, I believe his name is Frank.

(Testimony of Glen James Kirkham.)

Q. What Union did you belong to then?

A. The Woodworkers'.

Q. You were Shop Steward for M-271?

A. Yes.

Mr. Banfield: That is all.

Mr. Andersen: That is all. Thank you.

(Witness excused.)

Mr. Banfield: If the Court please, I move the testimony of the witness be stricken as entirely immaterial.

The Court: I don't see its materiality.

Mr. Banfield: I move it be sticken from the record.

Mr. Andersen: May I state the purpose for the record?

The Court: Yes. [869]

Mr. Andersen: We called young Mr. Kirkham to the stand to testify to the animus existing between Mr. Hawkins and the Longshore Union in particular, or any Union in general. That was the purpose of it. Now, evidence has been introduced that Mr. Hawkins didn't want to do business with the Longshore Union because the Company had a contract with—that is, the Juneau Spruce Mill—had a contract with the I.W.A. Part of our position is that Mr. Hawkins didn't want to do business with the Longshore Union and we will have another witness who will quote Mr. Hawkins as saying he would close his plant before he would do business with the Longshore Union. It goes to the

animus and complete bad faith in refusing to negotiate.

The Court: But how are negotiations involved here? How are they material here?

Mr. Andersen: Under the allegations of the complaint, may it please the Court, they talk about—they accuse this Union, Local 16, of inducement and coercion regarding this so-called jurisdictional strike. That is the ultimate of their case. We are refuting it by showing there was no such interest, no such coercion. Conversely, so far as the Company is concerned, one witness will quote Mr. Hawkins as saying "We will close down this plant before we will do business with the Longshoremen." That goes, as I see it, to an important aspect of the case. [870]

Mr. Banfield: If the Court please, the allegations in the complaint are that this defendant, both defendants, have by strike and by refusing to work for other employers, have induced and encouraged the members of M-271 not to work and the object was to get the work for themselves. What difference does it make what Mr. Hawkins' attitude was in this? It has nothing to do with it. It is a case of, if they did induce the men not to work or not. They haven't set up a defense that M-271 didn't go through the picket line, because they didn't like Mr. Hawkins, or some other method. It is simply a case of where they are trying to describe Mr. Hawkins in some way that has nothing to do with the issues in the case.

Mr. Andersen: With respect to the matter of

pleading, your Honor, I don't believe it is necessary to plead affirmative defense. We simply meet the issues as framed by the plaintiff, affirmative proof under the issues as framed. Mr. Banfield may have one idea about this case. We certainly have different ideas. We take the positions here that Mr. Hawkins, the Manager of the Company and spokesman in Juneau, if he goes so far as to say "We will close this mill before we do business with the Longshoremen," it goes to the question of good faith so far as the employer is concerned and liability to negotiate in good faith under the Taft-Hartley Act, and, if the Court please, credibility of Mr. Hawkins, in so far as it shows animus [871] towards this Union and all Unions in general. We think it is very proper, for those purposes, and within the issues as framed.

The Court: I don't think it is relevant to any material issue. The testimony will be stricken.

ERLAND PEARSON

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Andersen:

Q. What is your name, sir?

A. Erland Pearson.

Q. You are a longshoremen, of course?

A. Yes, sir.

Q. And you are presently President of Local 16?

A. Yes, sir.

(Testimony of Erland Pearson.)

Q. The Longshore Union, defendant here?

A. Correct.

Q. How long have you been President of this Local 16?

A. Since the first part of July, 1948.

Q. And how long were you a member of this Union prior to that time?

A. I joined Local 16 in October of 1947.

Q. From the time you first became a member of the Union, did you take an active part in its affairs? [872] A. I certainly did.

Q. And since you became President, you have exercised that office, have you? A. Correct.

Q. From the time you first became President of this Union, Mr. Pearson, and prior to the time you were and while a member of the Union, what was the attitude of the Union in relation to willingness to arbitrate this dispute?

A. Local 16 has at all times——

Mr. Banfield: I object. Willingness to arbitrate hasn't anything to do with this case. This employer can't be forced to hire persons because somebody else is willing to submit to arbitration. Under the circumstances, any arbitration means that an employer's rights could be taken away from him.

The Court: I don't see where the necessity of arbitrating anything has anything to do with this case.

Mr. Andersen: May it please the Court, Mr. Banfield through Mr. Flint put in lots of evidence and particularly on cross-examination there was

(Testimony of Erland Pearson.)

lots of evidence, and also it came out on direct examination in relation to arbitration. Your Honor will recall I examined Mr. Flint at length, proper cross-examination, regarding meetings, what was said, and arbitration.

The Court: I remember your examination. I do not [873] recall any testimony of the necessity of arbitrating in Mr. Flint's testimony on direct examination.

Mr. Andersen: Otherwise I am sure I wouldn't have been able to cross-examine on the subject, and I was. Your Honor will recall Mr. Flint was somewhat confused at the difference between arbitration and negotiation. He was examined at length regarding it. We offered the testimony in refutation of Mr. Flint's testimony, and also, may it please the Court, under the pleadings and the issues as framed, particularly as in the Taft-Hartley Act where the sections refer to conciliation where the employer exercises good faith under the provision for conciliation and mediation, that labor disputes be not unnecessarily prolonged but amicably adjusted under the Taft-Hartley Act itself. It is our position, and always has been, that the good faith of the employer here is definitely in issue. This testimony also goes to the further fact that the contract, the longshore hiring contract put in evidence through Mr. Schmidt, which Local 16 contends—and is a fact—carried over from the Juneau Lumber to the Juneau Spruce. There is an arbitration

(Testimony of Erland Pearson.)

clause in that contract and if the Union is willing to arbitrate we have a right to put it in issue. All those contracts have that clause and the contract adopted by the Juneau Spruce Corporation from the Juneau Lumber, when the alleged dispute arose—we take the position, and I will through other witnesses also take the [874] position that the method to immediately settle the dispute was to wit: arbitration, as the contract provides. That is an issuable fact and I offer it under that.

The Court: There is no such contract yet in evidence.

Mr. Andersen: That is the contract put in evidence.

The Court: On the promise it would be connected up. It hasn't been connected up. Any questions with reference to arbitration would seem to be without foundation.

Mr. Andersen: May it please the Court, it has been connected up. I think it was put in evidence. I don't believe my recollection is wrong. I may be wrong. I don't want to get into an argument of the record with the Court. My recollection is that it was admitted into evidence. We called Mr. Schmidt. My notes show it was put in evidence subject to no qualifications of any kind. It is our position that it is an issuable fact in the case. If the contract—if this jury finds it carried over, as Mr. Schmidt testified, it will be our position that this Company had to arbitrate the matter before it could do any-

(Testimony of Erland Pearson.)

thing else. On the basis I have stated, we respectfully state it is admissible.

The Court: My recollection of Mr. Schmidt's testimony as far as this contract is concerned, is that it was put in out of order on condition that it would be connected up. It was admitted in evidence subject to being connected up. I [875] may be wrong, of course, in my recollection.

Mr. Strayer: Your Honor is correct.

Mr. Banfield: Your Honor is correct. In the first place, the contract is simply amendments to the previous contract and was put in on the basis that it would be connected up. I call the Court's attention that counsel has again misstated the record. When Mr. Flint was on the witness stand he was asked about a certain conversation with Mr. Albright, who and when and where, by each side. They went on, one conversation after another. On cross-examination Mr. Andersen kept saying "Didn't he say so-and-so" and "Didn't he offer to arbitrate." We are willing to show what the conversation was. We expected a connection, but a connection never came. That is how the evidence got in here regarding arbitration. None of it was brought in by us whatever.

The Court: I can't see how willingness to arbitrate is relevant here at all.

Mr. Andersen: I have stated it, may it please the Court.

The Court: Yes, I know your position.

(Testimony of Erland Pearson.)

Mr. Andersen: I have stated my position as clearly as I can. If the Court won't permit the evidence to be put in, I would like to make an offer of proof; namely, this witness will testify——

The Court: Perhaps we better have that in the absence of the jury. The jury may be excused until called.

(Whereupon the jury retired from the courtroom.)

Mr. Andersen: In order that I may understand your Honor, do I understand your Honor to say arbitration is not an issue in this matter at all?

The Court: I don't see how it is. I am willing to hear from you.

Mr. Andersen: In order to make sense, I want to know your Honor's position. Do I understand your Honor to rule, even though a contract has an arbitration clause that still arbitration is not an issue in this case?

The Court: I think my ruling contemplated that if there was such a contract here in effect between the plaintiff and the defendant, Local 16, then there would be a predicate for anything that would be relevant, but the condition on which that contract was admitted in the evidence has not yet been met.

Mr. Andersen: Well, then, I mentioned to the Court that—or rather I did this: we put the contract in evidence. It is in evidence, your Honor said, subject to a motion.

The Court: No, subject to your connecting it up.

(Testimony of Erland Pearson.)

Mr. Andersen: But I understand further—I mentioned this to the Court before, I want the Court to understand what I have in mind—we take the position we can't put all the aspects of the case in at one time, may it please the Court. [877] That is impossible. We take the position as a matter of law based upon the facts that that contract which Mr. Schmidt testified had been carried right over to Juneau Spruce—your Honor will recall he testified that was the contract—and after the Juneau Spruce took over they carried right on under that contract, as well as carried over under the I.W.A. contract. It is our position and upon which the jury must find that that contract itself, that is the contract to which Mr. Schmid testified was in full force and effect between the parties from May 1, 1947, on. It is our position that is the question. It is in issue here.

The Court: Before you get farther, my recollection of Mr. Schmidt's testimony was not that the contract carried over, but that the practice inaugurated under that contract carried over. That is a different thing. There is nothing to show here that it would be a matter of law for the Court to decide, that this previous contract between the Juneau Lumber Company and the defendant was assumed by its successor, and the Court hasn't held that, and no necessity had arisen for passing on that. Before this testimony that is now about to be offered by this witness could possibly become rele-

(Testimony of Erland Pearson.)

vant, the Court would have to hold that that contract was binding on the plaintiff.

Mr. Andersen: I think we are talking about the same thing, but from different angles. Mr. Schmidt testified [878] substantially as your Hopor stated; namely that from and after May 1 they carried on the same practices with not only the Longshoremen but with the I.W.A. that they previously carried on, the I.W.A. contract as well as the I.L.W.U. contract. He even testified grievances were settled. To make my point specific, from that course of conduct on the part of the Company, and the course of conduct of the Longshoremen accepting employment on that same basis, it is our position that the contract was carried over. We contend that it is an issuable factor in the case. We can simply show that. We offer this to ascertain—the evidence is practically in already—that the contract carried over and that it would be their duty to arbitrate. If your Honor thinks, with that statement before you, that the evidence is not admissible, your Honor should so rule.

The Court: The testimony on behalf of the plaintiff is all to the effect that there was never any intention to either assume the contractual obligations of the predecessor or that they ever were, in fact, assumed. Of course, in the interim, you might say, of the expiration of the contract of the predecessor and the execution of the contract of November 3, there would be a necessity arise of adopting some method or practice to iron out any disputes that might arise, but it wouldn't have the effect as

(Testimony of Erland Pearson.)

a matter of law to put into effect the whole contract, and particularly in the face of [879] the testimony on behalf of the plaintiff that they did not assume that contract or any other contract, that it was their purpose to have new contracts executed. In that state of the testimony any evidence as to the willingness or unwillingness of Local 16 to arbitrate is irrelevant.

Mr. Andersen: Just before your Honor rules, then pursuant to your Honor's ruling, I offer—we offer to prove through Mr. Pearson, the witness on the stand, the following facts: that from and after April 30 or May 1 of 1947 there was a contract in effect between the Juneau Spruce Corporation and Local 16, one of the defendants herein, that the contract contains an arbitration clause. We have the contract on our desk. It has an arbitration clause and requires the Company to arbitrate pursuant to that. Mr. Pearson would testify as President of the Union and that prior to July 1 of 1948 and at all times subsequent thereto, Local 16 has at all times been willing not only to negotiate, but to arbitrate, any and all issues involved in the dispute at the yard of the plaintiff herein. I might state that the arbitration clause is in the usual wording.

The Court: Is that a copy of the contract that has already been admitted conditionally?

Mr. Andersen: No; we would introduce this also, may it please the Court.

The Court: What is it? [880]

(Testimony of Erland Pearson.)

Mr. Andersen: The Coast-wise agreement, may it please the Court, which is referred to in the one in evidence, the gentlemen from the Northland Transportation Company, regarding arbitration and settlement of disagreements—he testified yesterday.

The Court: How do you reason that a contract between the Northland Transportation and the Local would be binding on Juneau Spruce?

Mr. Andersen: Because I believe Mr. Schmidt testified the Juneau Spruce authorized the Northland Transportation Company to negotiate for them in all contracts and the Juneau Lumber too, I believe. That is all the waterfront employers up here formed some sort of association, Juneau Dock Employers or some such name, and the gentleman on the stand, I believe yesterday, is Secretary or something of that organization, the gentleman occupies that position, so all the employers here entered into contracts with the Longshoremen's Union—that contract has the arbitration clause to which I refer. The practice of the Pacific Coast, may it please the Court, is somewhat similar, Waterfront Employers' Association of the Pacific.

The Court: The question is whether the Juneau Spruce joined the Waterfront Employers' Association. Where is evidence to that fact? I don't recall any.

Mr. Andersen: I don't believe there is any, may it [881] please the Court. The evidence upon which we rely I have already stated to your Honor. I am

(Testimony of Erland Pearson.)

perfectly frank in stating to your Honor Mr. Schmidt, I believe, on direct examination testified as your Honor indicated, that after the Juneau Spruce took over they did not as their predecessor had done, joined the Dock Employers' Association, at least so far as longshore work was concerned. I don't know if it was limited or general basis, or if at all. We are only concerned in this aspect, but I understand the fact to be after May 1, 1947, Juneau Spruce did not. We consider that an immaterial factor.

The Court: You contend they are bound nevertheless, even though they did not join?

Mr. Andersen: Yes. It is our position, we have raised the question of fact. May I read Section 9 as part of my offer of proof?

The Court: You can do anything you want as part of your offer.

Mr. Andersen: I offer to prove under the contract presently in effect between—presently in effect between the parties, or at least in effect at the time this dispute arose, says "The Secretary of Labor or any person authorized by the Secretary at the request of either party shall forthwith appoint a standing Coast Arbitrator and also standing Local Arbitrator in each of the four regional districts who shall serve for the period of this agreement," and in the event [882] that any Labor Relations Committee—maybe I better read the clause, Section 9. By the way, your Honor will recall that Wayne Morse, who is a Senator now, was at one

(Testimony of Erland Pearson.)

time Arbitrator on the Coast. "In the event that any Labor Relations Committee or the parties hereto fail to agree on any question involving a basic interpretation of this agreement or any other question of mutual concern not covered by this contract relating to the industry on a Coastwide basis, such question, at the request of either party, shall be referred for decision to such Coast Arbitrator. In the event that any Labor Relations Committee or the parties hereto fail to agree upon any question of local application within twenty-four hours after it has been presented, such matter, at the request of either party, thereupon shall be referred for decision to the local Arbitrator for the district in which the matter in dispute arises. The Coast Arbitrator shall have the power to determine whether any question in dispute involves a basic interpretation of the agreement and if the dispute in question is one of mutual concern relating to the industry and not covered by the agreement, whether it is of Coastwise or local application. If any Standing Arbitrator, Coast or port, shall be unable, refuse or fail to act, or resign, then the Secretary of Labor shall promtply appoint his successor or substitute. The expenses of any arbitrator shall be borne equally by the Association and the Union. Nothing in this [883] section shall be construed to prevent the Labor Relations Committee from agreeing upon other means of deciding matters upon which there has been disagreement."

(Testimony of Erland Pearson.)

It is our position pursuant to this agreement there was at all times available a Coast Arbitrator, a Local Arbitrator or the other arbitration procedure set up in the section to which I referred. It should have been referred to arbitration under the contract and therefore this witness's testimony that at all times they were ready and willing to negotiate and arbitrate is relevant to the issue.

The Court: That is the same contract you contend carried over from the Juneau Lumber to the plaintiff?

Mr. Andersen: Yes, your Honor.

The Court: Since, as I have already held, there is no evidence to that effect, then this testimony as to willingness to arbitrate is without foundation and premature.

Mr. Andersen: May I extend the offer of proof as to the testimony of this witness? We also offer to show by this witness that from April 30, 1947, so far as longshore work in Juneau is concerned, particularly in relation to the Juneau Spruce Corporation, that Local 16 was never advised of any termination of any contract, that on the contrary they were hired in the same manner and under the same conditions under the contract in evidence, that any grievances that arose on the job were settled in the same manner, and further, so [884] far as the Longshoremen are concerned, they were hired in identically the same manner and there was no difference in their relations with the Juneau Spruce and the Juneau Lumber.

(Testimony of Erland Pearson.)

The Court: You make that last offer to show in fact the contract carried over?

Mr. Andersen: Yes, your Honor. I have stated it as clearly as I can. Contracts may be implied or may be expressed. I know of many instances where the Labor Board, like in a famous petition case, a runaway case where the corporation changed states, may it please the Court, as well as name, the National Labor Relations Board held them to be bound by the contract. I don't like to argue with Courts. It seems to be presumptuous. I have stated my facts as clearly as I can. I think it is clearly admissible.

The Court: As I have said before, whether or not this contract that has been introduced conditionally in evidence is binding upon the plaintiff, is a matter of law upon which the Court has not yet had occasion to pass, because the question has not been presented yet. As far as showing willingness to arbitrate under the contract, that hasn't yet been shown to be applicable or to have been adopted by the plaintiff. The evidence is premature.

Mr. Andersen: I think I will then offer this agreement. I think I shall offer it for identification then. I will offer it as de novo. It is intended to complete the [885] Defendants' Exhibit C which is in evidence, and this will be for identification, and in pursuance to our offer of proof we offer the agreement itself in evidence for identification, your Honor.

(Testimony of Erland Pearson.)

The Court: It may be marked for identification.

Mr. Andersen: As part of our offer of proof I would like to extend it one step further. Pardon, what is the number?

Clerk of Court: This exhibit has been marked Defendant's Exhibit No. D for identification.

Mr. Andersen: I would like to show through this witness and appropriate questions that during the life of that agreement there have been many arbitrations under the terms of the arbitration clause to which I referred, of local conditions, disputes which arise between dock employees here and the Longshoremen.

The Court: You may call the jury.

Mr. Strayer: Your Honor please, before the jury comes back I would like the record to show that plaintiff does not object to—and I understand your Honor is not precluding—any competent evidence of any contract between the Company and either of the defendants.

The Court: No.

Mr. Andersen: All I can show is what I have offered to show, that from May 1 on these men were hired in the same [886] manner, in the same way, as stated in the offer of proof, and that grievances were settled in the same way and disputes in the same way and they were never advised of a contract termination or claimed termination. It is our contention—well, I have already stated my position.

(Testimony of Erland Pearson.)

The Court: Your contention is there was an implied contract that was substantially similar in terms?

Mr. Andersen: Yes, your Honor, the same.

The Court: You say you have no objection to that?

Mr. Strayer: I think it all depends on how far that evidence would go. I think counsel's offer of proof should be made by evidence and we can see if it constitutes legitimate evidence.

The Court: Evidence of willingness to prove or arbitrate is premature. There is nothing in the record at the present time showing that the formal contract carried over or that there was an implied contract equivalent in terms. If you put in evidence of that kind, why then it may become relevant to permit evidence of this kind in.

Mr. Andersen: May I state my position again? May I first get a drink of water? Mr. Schmidt's testimony is now before the Court. My offer of proof is now before the Court. As I conceive Mr. Schmidt's testimony and my offer of proof the effect of that, so far as the defendants are concerned, is a contention based upon issuable facts which we [887] feel should go to the jury on the following premise: Exhibit No. C is a contract entered into between Juneau Lumber Mills and Local 16 that was introduced through Mr. Schmidt. He testified that a contract was in effect April 30, 1947. He testified that immediately thereafter they carried on their same practice under this contract

(Testimony of Erland Pearson.)

with the Longshoremen's Union. He testified that thereafter they carried on the same practice, the same terms, worked under the same agreement with the I.W.A. That was his testimony. This witness, as I have already indicated, through the offer of proof——

Mr. Strayer: May I suggest, your Honor, the witness should be questioned.

Mr. Andersen: The only time that action is taken is when a client is on the stand.

The Court: That this witness be questioned?

Mr. Strayer: This is the witness you refer to?

Mr. Andersen: He is the one, and this witness, as I have indicated in my offer of proof, would testify that from and after May—that from and after the date of the contract, there was no change in the working conditions.

The Court: Until when?

Mr. Andersen: Until they finally refused to negotiate with them.

The Court: Well, before the execution of the contract of November 3? [888]

Mr. Andersen: Yes, your Honor.

The Court? How long before?

Mr. Andersen: At least October 3, at least in September, that there was absolutely no change in their hiring practice. Mr. Schmidt has already testified there was no change in the hiring practice. They never advised the Union there was no such contract. The Union carried on in the same manner, they were hired in the same way, paid the same wages except

(Testimony of Erland Pearson.)

when there was a raise and then, of course, Juneau Spruce paid the raise and everybody else paid the raise. There was no question about that. So, it is our position that the contract was in effect, and being in effect, they had to arbitrate; therefore, arbitration here is a relevant matter. We are raising the question that they had to arbitrate. Certainly they say there was no contract. There is no question about that. That is their contention. We contend there is, and was, and go so far as to say there is a contract.

The Court: The Court didn't intend to preclude you from showing there was a contract, and that is the condition under which Exhibit C went into evidence.

Mr. Andersen: The only way to prove the facts, except by stipulation, is by asking the witness.

The Court: You were asking the witness as to willingness to arbitrate. That is my ruling. [889]

Mr. Andersen: Do I understand that the question itself is untimely?

The Court: Yes. In other words, there isn't a sufficient foundation as to the evidence of an implied contract. If you feel you have enough evidence to that fact——

Mr. Andersen: I will ask this witness questions such as from and after May 1, 1947——

The Court: You don't have to explain. You will be permitted to question him as to evidence of any contract, but my ruling that the question of the willingness of the defendant Local to arbitrate is premature, stands. You may call the jury.

(Testimony of Erland Pearson.)

Mr. Strayer: One more thing, your Honor. As I understand your Honor's ruling counsel now will be required to establish a contract and I understand he can question the witness regarding past practice? It has been our position all the way through that past practice is not admissible, unless they reach the point of establishing a contract, we don't think. Such evidence will be of prejudice to the plaintiffs if you let it come in unless the Court will rule if it is a jury issue and such a contract. It seems to me if counsel—I think he should state exactly the answers, or by testimony in the absence of the jury, so we can determine if we have evidence to go to the jury.

The Court: It hasn't been the practice of this Court to submit any proof of his good faith. Mr. Andersen is an officer of the Court here and I feel that if he offers to show a certain state of facts at least sufficient to go to the jury, I think he should be allowed to do so without requiring it in advance. It is subject to being stricken if it falls short, but he should be given the opportunity.

Mr. Andersen: I was going to suggest a short recess. I am not sure I understand your Honor.

(Whereupon the jury returned and all took their places in the jury box.)

The Court: You will be given all the opportunity you wish to prove an implied contract.

Mr. Andersen: That is fine.

The Court: You may proceed.

(Testimony of Erland Pearson.)

Q. Again, for the record, you are the President of Local 16? A. That is correct.

Q. As President of the Local, have the affairs of the Local in relation to the employers, come to your attention? A. Yes, sir.

Q. Would you speak a little louder, please, so all of us will hear you. A. Yes, sir.

Q. Prior to—would you glance through Exhibit 3, please. Just take your time and read it.

The Court: You said "3," but I thought it was the [891] contract of November 3?

Mr. Andersen: I thought I said "C." I meant "C."

The Court: The record may show the reference was to Defendants' Exhibit C.

Q. This contract to which I have directed your attention—the collective bargaining testimony of Mr. Schmidt, do you recall that?

A. I wasn't here during the latter half of his testimony.

Q. Do you recognize this contract?

A. Yes, I do.

Q. What is this contract?

Mr. Strayer: Your Honor, please, for the record, might it be understood that we object to all this testimony concerning past relations concerning Juneau Lumber Mills and Local 16, unless it is connected up, on the ground that it is irrelevant and immaterial.

The Court: If it isn't connected up it will be stricken.

(Testimony of Erland Pearson.)

Mr. Andersen: Will you repeat the question?

Court Reporter: "What is this contract?"

A. That is a contract pertaining to working conditions between the Local 16 and the Waterfront Employers of Juneau.

Q. Between Local 16 and the Waterfront Employers of Juneau? A. That is correct.

Q. Do you know if the Juneau Lumber Company was a member of [892] the Waterfront Employers? A. Yes, sir.

Q. And after May 1, or after April 30 of 1947, the date that Juneau Lumber Company sold to Juneau Spruce Company, were the Longshoremen here hired in the same manner?

Mr. Strayer: I object to that as leading, your Honor,

The Court: I don't know—it isn't leading. It may not be, depending on what the rest of it is.

Q. After April 30 of 1947, so far as Juneau Spruce Corporation is concerned, were they hired in the same manner, by the same person, and under the same terms and conditions as they had been hired before?

Mr. Strayer: I object to that as leading, and it is a complex question and also calling for a conclusion of the witness.

The Court: I think in view of the nature of the question that it ought to be split up and call for merely a yes or no answer.

Q. I will put it this way: how were the men

(Testimony of Erland Pearson.)

hired by the Juneau Lumber Company, if you know?

A. Whenever a barge or scow or ship or anything that carried lumber, or water-borne commerce, would come into the Juneau Lumber Mill dock, they would call the Longshore Hall as they do right today, I mean as the other Waterfront Employers do, to ask for a certain number of Longshoremen [893] at a certain time, and the men go down to work at that designated time and perform the work.

Q. After Juneau Spruce took over was there any difference in the method of hiring, the method of pay, the method of settling grievances, the method of arbitration, or anything else, so far as Juneau Spruce was concerned?

Mr. Strayer: I object to that, the same as before. It is complex and calls for a conclusion.

Mr. Anderson: I submit the question is not complex. It calls for a yes or no answer.

The Court: Yes. Objection overruled.

Mr. Andersen: Will you read the question, Miss Reporter?

Court Reporter: "After Juneau Spruce took over was there any difference in the method of hiring, the method of pay, the method of settling grievances, the method of arbitration, or anything else, so far as Juneau Spruce was concerned?"

Mr. Strayer: May I make a further objection? I object to anything concerning grievances or method of arbitration or adjustment of disputes.

(Testimony of Erland Pearson.)

The Court: I think it should eliminate those two, grievances and arbitration.

Mr. Andersen: This is my witness. I am asking him the question. This is my witness. This is new matter. I [894] certainly have the right to ask my witness whether there was any grievance there.

The Court: You are not basing this question on past testimony?

Mr. Andersen: What do you mean by "past testimony"?

The Court: That point counsel raises that there was no testimony as far as past practice, grievances or arbitration.

Mr. Andersen: I believe there was, your Honor. I believe there was testimony. Of course, this has been a long trial, and I am sure that I, as well as the jury and your Honor, can't remember everything. It seemed to me I asked Mr. Schmidt about handling——

The Court: Objection overruled. You may proceed.

Mr. Andersen: Will you read the question please, Miss Reporter?

Court Reporter: "After Juneau Spruce took over was there any difference in the method of hiring, the method of pay, the method of settling grievances, the method of arbitration, or anything else, so far as Juneau Spruce was concerned?

A. No, there wasn't.

Q. Were there any changes in rates of pay, if

(Testimony of Erland Pearson.)

you recall, from May 1, 1947, until we will say, the end of the year?

A. If I remember right, we got an increase. I don't remember [895] the exact amount—I believe twelve and a half cents an hour raise in pay, which took effect——

Q. When?

A. I couldn't be exact as to the date.

Q. About what month?

A. I believe it was in June.

Q. Of 1947? A. I believe so.

Q. And did Juneau Spruce pay that raise in pay for the work they did, the same as all the other employers on the dock?

A. They did. For any Longshoremen that worked there they paid the pay, certainly.

Q. For any Longshoremen they hired?

A. That is correct.

Q. This contract to which I have referred, refers to Local 16, does it not? That is your Local?

A. That is correct.

Mr. Andersen: May I have just a moment, your Honor?

Q. Now, this particular contract which is exhibit No. C, does this refer to the Coast agreement?

A. To the Coast agreement? No, sir. That pertains only to the Juneau Waterfront Employers and Local 16.

Q. Does it in terms refer to the Coast agree-

(Testimony of Erland Pearson.)

A. That is the understanding all the time; if Local 16 and [986] any one of the Waterfront Employers get into a dispute that cannot be settled here, then through the Local agreement it would go below to the Coast or a Local Arbitrator for settlement.

Mr. Strayer: I move to strike that as not responsive and stating a conclusion and understanding.

Mr. Andersen: He is President of the Local testifying as to the Local.

The Court: As I ruled before, the objection might go to the part on which he was examined.

Q. I direct your attention, Mr. Pearson, to Section 9——

Mr. Andersen: In the interest of time, it would be better to take a recess, and I could correlate this material better.

The Court: I like to split the afternoon session, but if you think we can save time we will take a recess for ten minutes.

(Whereupon Court recessed for ten minutes, reconvening as per recess with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:)

Mr. Andersen: At this time I desire to offer in evidence Defendant's Exhibit D for identification. I assume you have seen it? While counsel is examinging the document, may I read a portion of this, may it please the Court? [897]

(Testimony of Erland Pearson.)

The Court: If counsel do not object. They can't do both.

Mr. Andersen: That is true.

Mr. Strayer: We object to the offer, your Honor, as irrelevant and immaterial. The contract is not properly identified or shown to have any relation to the Juneau Spruce Corporation.

The Court: Is this the same?

Mr. Andersen: If I state it, probably the Court will see the point and counsel will, too. I will read the first portion of Exhibit 3—Exhibit C.

Mr. Strayer: Just a moment. That exhibit is not in evidence, as I understand it, or it is subject to the reservation of being connected up and not proper until then.

Mr. Andersen: It is marked in evidence, your Honor.

The Court: Only conditionally in evidence, and until it is connected up, as I have said before.

Mr. Andersen: How am I going to connect it up unless I read a portion and talk to the witness about it?

The Court: But you are about to read it to the jury.

Mr. Andersen: And to the Court, for the purpose of getting Exhibit D in evidence.

The Court: It is improper to read it to the jury at this time, but you may base your questions to witness on it, of course. [898]

Q. Mr. Pearson, Exhibit C you have already tes-

(Testimony of Erland Pearson.)

tified was the contract which was in effect after May 1, is that correct? May 1, 1947?

A. That is correct.

Mr. Andersen: Now I offer this in evidence, may it please the Court.

Mr. Strayer: That is objected to on the same ground as it was before, not connected with Juneau Spruce Corporation in any way.

The Court: That is the agreement by the Juneau Lumber Mills?

Mr. Andersen: Which we say was carried over from Juneau Lumber to Juneau Spruce, and under which they operated, according to the testimony of Mr. Schmidt and the testimony of Mr. Pearson.

The Court: Whether it was carried over is not for the witness to say. On a matter of law it has to be shown that in fact it was carried over.

Mr. Andersen: That is what I am trying to show.

The Court: You asked the witness if it was carried over. That is a matter for the Court to decide. That is an insufficient basis to consider the exhibit fully in evidence.

Mr. Andersen: What I am trying to do at this moment, may it please the Court, so the Court will have in mind these two documents, Defendant's Exhibits C and D, are really the [899] same document, that is, Exhibit C is an amendment to Exhibit D. Exhibit D is signed by Juneau Spruce Corporation.

Mr. Strayer: Oh, no.

(Testimony of Erland Pearson.)

Mr. Andersen: Sorry, I mean Juneau Lumber Company—signed by them, and this document on its face refers to Exhibit C—on its face refers to Exhibit D, that it is an amendment to Exhibit D. Does your Honor follow me there?

The Court: Yes, I follow that.

Mr. Andersen: Mr. Schmidt has testified that this hiring practice remained the same after May 1 of 1947. This witness testified everything was the same, and it is our contention—which is the only fact that can be inferred from his evidence, of course—that after May 1, 1947, both parties, to wit, Local 16 and Juneau Spruce, adopted this contract through their course of conduct with each other from and after May 1, 1947. That is the testimony of this witness, may it please the Court, and it is on that basis I offer it.

The Court: You are not offering to show an implied contract, you are offering to show a former contract carried over.

Mr. Andersen: Well, certainly, and as an implied contract through their ratification. It doesn't make any difference to us whether it was an implied contract or whether it was the course of conduct of the parties, I guess. It is our position substantially that through a course of conduct between [900] the parties this happened. Either it was actually carried over, or through a course of conduct between the parties, an implied contract arose. Under this agreement, there is no evidence by Mr. Schmidt or

(Testimony of Erland Pearson.)

this witness that it carried over on this contract from this. It is a matter of fact for the jury at this point, as I construe the evidence.

The Court: There is nothing in Mr. Schimdt's testimony that would justify that conclusion, but if you have evidence to show in opposition to the testimony on behalf of the plaintiff, that plaintiff assumed this contract, of course you may certainly go ahead and prove it.

Mr. Andersen: Your Honor, I have already put that evidence in through Mr. Pearson.

The Court: You mean his conclusion it was in effect?

Mr. Andersen: Not his conclusion. He testified as to the facts. He testified that from and after May 1, 1947, his relation—the Union's relation—with the Juneau Spruce Corporation was identical to what it had been with Juneau Lumber Corporation. They were never advised of any termination of any contract. On the contrary, when the Juneau Dock Employers granted a twelve and a half cent raise in June of 1947, according to the witness Juneau Spruce also paid that raise which was under the contract. Now, I don't know what more evidence we can present.

The Court: The most you have shown is that there was [901] a practice here to call on the Longshoremen to do certain work but that is far from showing that that carried over the contract to the successor, to the plaintiff:

(Testimony of Erland Pearson.)

Mr. Andersen: Now, maybe reasonable minds will disagree on what your Honor has stated, not as a matter of law—we are talking about a matter of fact, and maybe reasonable minds will differ. I don't know, but the Longshoremen's position is that having carried on under this contract they ratified it, operated under it, and it became, if not an expressed, an implied contract between the two of them. Mr. Pearson testified under that contention and that a wage increase was paid without trouble. They recognized their duty under the contract to pay it, otherwise, of course, they wouldn't have paid the money. On that basis we contend the contract carried over.

The Court: The Court holds it is insufficient to hold or bind Juneau Spruce Corporation, and to hold that that contract carried over.

Mr. Andersen: Then may I——

The Court: I think the foundation is insufficient. There is no evidence here whatever, except to the contrary that Juneau Spruce ever recognized this contract in their dealings with Local 16 after they took over. You might argue that there is an inference to that effect from the fact that they called them up and asked them to come down and do longshore [902] work. That isn't sufficient to put a contract in effect or continue its life.

Mr. Andersen: Your Honor, my position on the point is very simple. There is either a contract in effect or there isn't a contract in effect, whether

(Testimony of Erland Pearson.)

the contract is expressed or whether the contract is implied. Whether the contract is in effect either as an expressed contract or an implied contract is an issue of fact, as I see it.

The Court: But there have to be facts first. There is no ratification, no testimony that Juneau Spruce said "We will continue this contract in effect." The fact that they called up the Longshore Hall and hired somebody to come to do longshore work isn't an implied contract. That is an expressed contract from time to time, as occasion arose. That isn't inconsistent with the testimony of the plaintiff, that they never adopted this contract or expressly repudiated it.

Mr. Andersen: So far as the Longshoremen are concerned, may it please the Court, there was no repudiation of the contract.

The Court: No, I am speaking of the plaintiff.

Mr. Andersen: We are not bound here by the plaintiff's position, may it please the Court. Certainly the plaintiff comes in here and offers one theory, one chain of evidence. We are not bound by that.

The Court: You have to show plaintiff did something [903] from which it could be inferred they intended the contract to continue and be bound by it, and the evidence so far is too short of that.

Mr. Andersen: Yes, it has to be shown, you and I agree. Possibly as to the quantum we don't agree. This witness has adequately shown that the Juneau

(Testimony of Erland Pearson.)

Spruce carried on under and adopted this contract, whether we call it expressly or impliedly, it is immaterial so far as that is concerned. Maybe I can develop it further.

The Court: I am not going to cut you out from developing it, but at the present the Court's impression is that practice similar under this contract falls short of binding the plaintiff in this case. If you want to go into it further, you may.

Mr. Andersen: Mr. Roden directed my attention to the Taft-Hartley Act. They couldn't divest themselves of the relationships with their employer. Of course, that is a matter of law I assume your Honor has taken into consideration in your Honor's ruling. I also want to direct another matter to your Honor's attention, so far as the contract is concerned. It is in evidence for another matter. It was introduced in evidence in impeachment of Mr. Flint. Mr. Flint, you will recall, stated that the longshoremen never had a contract with—that is, the Juneau Spruce never had a contract with—Local 16. He testified to that very emphatically. We offer this [904] contract also for the purpose of showing there was such a contract.

The Court: You mean with Juneau Lumber?

Mr. Andersen: Yes, Juneau Lumber. At the time we offered it in evidence when we were talking to Mr. Flint with regard to it, shortly after Mr. Flint left the stand, I offered it with relation to Mr. Flint. He said there was no contract between

(Testimony of Erland Pearson.)

Local 16 and Juneau Lumber, and I asked Mr. Schmidt specifically if it referred to Local 16, and it went in evidence on that basis.

The Court: It doesn't become available for every other purpose, and particularly for binding the plaintiff.

Mr. Andersen: It is in evidence.

The Court: Only for that limited purpose.

Mr. Strayer: It was not put in evidence for that. Mr. Flint never testified to no such contract. He testified there was never a longshoremen's practice.

Mr. Andersen: He testified there was an investigation. I asked "Did you make an investigation?"

The Court: That is immaterial, anyhow. Even though it is in evidence for that purpose it is not evidence for showing plaintiff corporation was bound by it.

Mr. Andersen: I was under the impression that when an exhibit is admitted for evidence it is for all purposes.

The Court: Not if it is for a limited purpose.

Mr. Andersen: I didn't limit my offer. No objection was made to its going in. Mr. Schmidt testified——

The Court: It couldn't have gone in for any other purpose, except for what it would rebut at the time.

Mr. Andersen: I will endeavor with Mr. Pearson.

(Testimony of Erland Pearson.)

Q. (By Mr. Andersen): Do you recall, Mr. Pearson, after May 1, 1947, whether there were any grievances arose on the job, discussed with the management in the same way they were discussed before?

Mr. Strayer: I object to that in the absence of the proper foundation. The witness testified he didn't become a longshoreman until 1947.

Mr. Andersen: He testified he is the president and familiar with its affairs.

Mr. Strayer: He can't testify to what happened before October.

Mr. Andersen: That is the objection I made on the case in chief, but if the witness knows——

The Court: Unless he knows, his testimony would necessarily have to be based on hearsay.

Mr. Andersen: The official affairs of the union, your Honor.

The Court: At a time when he was not president?

Mr. Andersen: He is president of the union now. I will submit the objection to your Honor. [906]

The Court: He may answer if he knows.

Q. Do you know?

A. I would like to have it restated.

Mr. Andersen: Read the question.

Court Reporter: "Do you recall, Mr. Pearson, after May 1, 1947, whether there were any grievances arose on the job, discussed with the management in the same way they were discussed before?"

(Testimony of Erland Pearson.)

A. By the "management"—what do you imply there—the Juneau Spruce Corporation?

Q. Yes.

A. All I know is that we were continually trying to get a written contract with them.

Q. To supplement Exhibit C?

Mr. Strayer: I object to that, your Honor, as calling for a conclusion and not within the knowledge of the witness. There is no proper foundation for it.

Mr. Andersen: That may be stricken.

Q. What I mean is whether any grievances on the job came up? For instance, you mentioned a twelve and a half cent wage increase you got in 1947. How did you get that? How did it come about?

A. Through negotiating with the Waterfront Employers of the Pacific Coast.

Q. And after that negotiation did all of the dock employers [907] here, including Juneau Spruce, pay that twelve and a half cent raise?

A. It applies automatically.

Q. Did you have any trouble getting it from Juneau Spruce? A. No, sir.

Q. Well, were your checks automatically increased that much money?

A. That is right. There was no trouble.

Q. That is the wage raise matter. Do you recall, or do you know—strike that. From time to time a minor dispute would arise on jobs and there

(Testimony of Erland Pearson.)

is a grievance clause in Exhibit D, I think—do you have in mind when minor grievances arose on jobs, were they taken up and settled with the Juneau Spruce in pursuance to this contract?

Mr. Strayer: May we have the time?

Q. After May 1, 1947, and up to November of 1947?

A. To my knowledge we had no trouble with the Juneau Spruce except we were trying continually to get a written contract with the new people.

Q. With the new company?

A. With the new company.

Q. Of course, until April 10 of 1948 the Local 16—did Local 16 do all the longshoring done there the way they had done, with the exception of this dispute about the barge?

A. To my knowledge they did; yes. [908]

Q. Is it true that all during that period you men had been hired in the same manner that you were hired before by Juneau Lumber?

A. Up to October?

Q. No, up to November 3, 1947.

Mr. Strayer: May we have the full question read, your Honor?

Mr. Andersen: Will you read it, Miss Reporter? The question wasn't answered. I will have to call another witness to supplement it. You may examine.

(Testimony of Erland Pearson.)

Cross-Examination

By Mr. Strayer:

Q. Mr. Pearson, you started work as a longshoreman in October of 1947?

A. I became a member of the local, but I worked as a longshoreman from the fall of 1946 on, off and on.

Q. Isn't it a fact you were employed by the Juneau Spruce Corporation during the summer and early fall of 1947?

A. 1947; I went to work for Juneau Spruce Corporation on August 11 and quit sometime the first part of October.

Q. You quit on October 15, did you not?

A. Sometime in the first part of October, I believe.

Q. What were you doing between May 1, 1947, and October 15, 1947? [909]

A. I was doing a little trolling and working extra longshoring.

Q. How much of that time did you work at longshoring?

A. A considerable amount of time.

Q. How much?

A. I have no records to show, but I worked a considerable amount of time.

Q. About how much?

A. About how much?

Q. Yes.

A. At least once a week on the average.

(Testimony of Erland Pearson.)

Q. During the entire period?

A. No, I wouldn't say that. I am taking the whole time as a—what I mean is taking the time—you mean from May to October?

Q. Yes.

A. I couldn't say exactly. I did considerable longshoring.

Q. Can't you say during what period of time you did that? Let's get at it this way: when did you start work for the Juneau Spruce Corporation in 1947? A. August 11.

Q. And you worked for them until October 15?

A. Yes.

Q. We have got the period from May 1 until August 11. What were you doing during that period of time? [910]

A. As I say, I was fishing. I have a trolling boat. I was trolling and doing longshoring on the side when I would come into town for something.

Q. You were doing longshoring off and on?

A. Correct.

Q. Did you do any longshoring for Juneau Spruce Corporation during that period?

A. No, I didn't.

Q. Then you never worked as a longshoreman for the Juneau Spruce Corporation prior to October 15, 1947? A. Prior to October 15?

Q. Yes.

A. I worked one boat for the Juneau Spruce Corporation, but I am not sure of the time. I believe it was later than October 15, 1947.

(Testimony of Erland Pearson.)

Q. Is that the only work you have done for Juneau Spruce Corporation?

A. No, sir. I worked there from August 11——

Q. I mean as a longshoreman.

A. Yes, I believe it is.

Q. What was that boat—was it a commercial steamer? A. No.

Q. What kind of boat?

A. It was a cannery tender, I believe, or a small boat. I don't remember. [911]

Q. Was that the only time you worked as a longshoreman for Juneau Spruce?

A. Myself, yes.

Q. Who paid you for that work, Mr. Pearson?

A. Well, the Juneau Spruce usually paid for it, but in this instance another fellow and I, Joe Guy and I, were working on the boat and the skipper went up—or rather, we went over to the office to turn in our time and be paid, but the Juneau Spruce, they absolutely refused to pay us at that time, so the skipper of the boat had to go to the Juneau Spruce and get cash and he paid us in cash, because the Juneau Spruce Corporation refused to pay us.

Q. About when was that?

A. To my knowledge, I believe it was the latter part of November.

Q. The latter part of November of 1947?

A. That is correct.

Q. Who called you down there to do the work?

(Testimony of Erland Pearson.)

A. Juneau Spruce Corporation.

Q. Did they call you personally?

A. They called the hall, called the delegate.

Q. Did they talk to you?

A. Juneau Spruce?

Q. Yes.

A. No, sir. They did down there, yes. [912]

Q. No, I mean who called the hall and ordered the men to come down?

A. I have no idea of who was calling; but somebody in the office.

Q. You have no personal knowledge of who called, do you?

A. I know it was somebody from the Juneau Spruce Corporation.

Q. How do you know?

A. Because the employer always calls the hall.

Q. How do you know it wasn't the cannery tender that called? A. How do I know?

Q. Yes.

A. I couldn't answer that question.

Q. You say Juneau Spruce usually called you, but on this one occasion the cannery tender skipper paid you? A. Yes.

Q. How do you square that with the statement that you never worked for Juneau Spruce except the one time?

A. Because Juneau Spruce called and asked for men and if they did as before, naturally Juneau Spruce would have paid us.

(Testimony of Erland Pearson.)

Q. Did Juneau Spruce ever call you and pay you for longshore work?

A. Like I told you, I just worked for them this one time.

Q. So you never got any money from Juneau Spruce Corporation directly for any work that you did for them, did you?

A. I got it from them indirectly. The skipper went over and [913] secured the money to pay us.

Q. You never got any money from them directly for any longshore work you ever did?

A. I considered it directly because it just changed hands.

Q. When you say "Juneau Spruce usually paid them" you are talking about other longshoremen and not yourself, isn't that correct?

A. That is correct.

Q. When you are talking about Juneau Spruce Corporation paying that raise in pay, did you get that raise in pay from the Juneau Spruce Corporation?

A. It was applicable at the time I worked, so I automatically received it.

Q. And that is the basis for your statement that Juneau Spruce paid the same rate of pay that other employers were paying?

A. Absolutely.

Q. I am talking about this twelve and a half cent increase you got.

A. I said approximately twelve and a half cent increase.

(Testimony of Erland Pearson.)

Q. I understand. After you signed up your agreement with the Waterfront Employers, putting in effect that increase, you longshoremen wouldn't work for any less than that, would you?

Mr. Anderson: That assumes something not in evidence. It assumes there was no agreement. [914]

Mr. Strayer: Mr. Pearson testified the wage rates were increased twelve and a half cents.

Mr. Andersen: He said there was some sort of arbitration for a wage increase and——

The Court: He is questioning him to find out if the Juneau Spruce increased it, or whether it was the Waterfront Employers or whether they increased their own pay, in order to clarify it.

Q. Do you remember the question, Mr. Pearson.

A. No.

Mr. Strayer: Would you read the question?

Court Reporter: "After you signed up your agreement with the Waterfront Employers, putting in effect that increase, you longshoremen wouldn't work for any less than that, would you?"

A. From time to time wage raises come into any contract.

Q. Can't you answer that question yes or no and then explain it, Mr. Pearson?

A. We are paid exactly what our contract calls for.

Q. Will you work for less than that?

A. Not under our contract; no.

Q. Suppose I call up your union hall for you

(Testimony of Erland Pearson.)

to come do work for me. Would you work for me for less than the contract price agreed to with the Waterfront Employers?

A. As a union man I would live up to my contract. [915]

Q. Yo uconsidered those wage rates as binding on anyone who called for your services?

A. Correct.

Q. And you wouldn't work for any other wage, would you?

A. That is the way I looked at it.

Q. Would you work for any other conditions, other than what was in the contract?

A. That is what a union is for, to get conditions and live up to them.

Q. If you worked for anyone the work you did would be under the conditions you had with that Waterfront Employers' contract?

A. Absolutely.

Q. Mr. Pearson, don't you work as a longshoreman for a lot of people with whom you have no contract?

A. With whom we have no contract?

Q. Yes.

A. That is a kind of hard question to answer, but all the Waterfront Employers of Juneau signed a contract with Local 16 and the employers who don't sign that contract automatically live up to the waterfront agreement with the longshoremen, and carried it out as such.

(Testimony of Erland Pearson.)

Q. How many employers are there that just follow along on the terms of that contract without themselves making a contract with you? [916]

A. Roughly, I would say twenty-five.

Q. There are many occasions when itinerant boats come to Juneau and call on you for longshore work, isn't that right?

A. Many of these small boats have a contract with us.

Q. Many of them do not, too, don't they?

A. That is correct.

Q. Then you furnish longshore services to those people, too, don't you? A. Certainly.

Q. And you draw the same rate of pay as you do with a contract with the others?

A. Correct.

Q. And the same deductions? A. Yes.

Q. You have the same size crews?

A. The size of the crews varies with the size of the job.

Q. But in accordance with your port rules, don't you? A. That is correct.

Mr. Strayer: That is all.

Redirect Examination

By Mr. Andersen:

Q. Just a few further questions. Mr. Strayer asked you about not having contracts with waterfront employers. [917] You said they referred—they all lived up to the Waterfront Employers'

(Testimony of Erland Pearson.)

agreement. What agreement did you refer to?

A. The Waterfront Employers of Juneau agreement with Local 16.

Q. Is this the agreement here, is this Exhibit C? Is this the type of agreement?

A. That is correct.

Q. This is it? A. That is correct.

Q. With respect to the Juneau Spruce company —Juneau Spruce Corporation—did they at any time tell the longshoremen's union as far as you know, as far as longshore work—as it had been done there in the past, that any agreement had been terminated? A. No, sir.

Mr. Andersen: I again renew my offer.

Mr. Strayer: The same objection.

The Court: What is the offer?

Mr. Andersen: Exhibit C being in, Exhibit D being a part of Exhibit C.

The Court: To show what?

Mr. Andersen: To show the implied contract between the parties.

The Court: Objection sustained.

Mr. Andersen: That is all of this witness. [918]

Mr. Strayer: Just a moment. May we have this marked for identification?

The Court: It may be marked for identification.

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit No. 21 for identification.

(Testimony of Erland Pearson.)

Recross-Examination

By Mr. Strayer:

Q. Mr. Pearson, handing you a document marked Plaintiff's Exhibit No. 21 for identification, I will ask you if that is not a copy of the contract which you had with the Waterfront Employers in Juneau in September, 1947?

A. I couldn't answer that. I was not a member of the local at that time.

Q. You don't know what contract they had in September, 1947?

A. Yes, I do, the one that was just handed in.

Q. Is this it?

A. That isn't the contract. That runs for the Territory of Alaska, not for the Port of Juneau.

Q. Was it applicable to the Port of Juneau?

A. Partially; yes.

Q. You do know that a contract was in effect then, between Local 16 and the Waterfront Employers here in Juneau?

Mr. Andersen: I think the witness has answered the question, may it please the Court. [919]

The Court: I beg your pardon?

Mr. Andersen: I think the question has been asked and answered.

The Court: He answered he didn't know because he was not a member of the local, and later intimated——

Mr. Andersen: He said it was a contract for the Territory of Alaska.

(Testimony of Erland Pearson.)

The Court: He certainly intimated that he knew what it was. You may question him further if you wish.

Mr. Strayer: May I have this one marked for identification?

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit No. 22 for identification.

Q. Now, Mr. Pearson, here is an exhibit marked Plaintiff's Exhibit No. 22 for identification. Do you know whether that was in effect between Local 16 and the Waterfront Employers of Juneau in 1947?

Mr. Andersen: This is all immaterial, may it please the Court. I can't see the purpose of it. As I understand the Court's ruling, the Court isn't allowing Exhibits C or D in, and Mr. Schmidt and this witness testified contracts were in effect. Unless counsel says it is a supplement to these contracts——

The Court: I don't see your point.

Mr. Strayer: Defendants contend Exhibit C was in [920] effect to 1941. I am trying to identify the contracts in 1947. I am trying to find out if those and not the others were in effect.

Mr. Andersen: Exhibits C and D are one document. They contain the annual renewal clause. They keep going from one year to the other. Mr. Schmidt testified it was in full force and effect and automatically renewed. The fact that it is dated in 1941 is immaterial. I fail to see the relation of

(Testimony of Erland Pearson.)

these agreements and your Honor's ruling regarding C and D.

Mr. Strayer: Mr. Schmidt said that they were similar.

Mr. Andersen: He said C was it.

The Court: Your purpose now is to show what the contract really was with its amendments or supplements?

Mr. Strayer: I am merely trying to find out what it was.

Mr. Banfield: I think I got counsel started. The purpose is to show the agreements of 1938 have gone by the boards years ago and by their terms, and have been superseded by new agreements, and that is it in September, 1947.

The Court: Not binding on the plaintiff?

Mr. Banfield: Just rebuttal. If the Court is allowing them to go in they are terminated, and new contracts have taken effect.

The Court: These contracts, Plaintiff's Exhibit C, [921] the only purpose for which it was introduced was to show the relation with the plaintiff's predecessor, and no other purpose.

Mr. Strayer: That is all the questions, your Honor.

(Witness excused.)

VERNE ALBRIGHT

called as a witness on behalf of the defendant, having previously been duly sworn, testified as follows:

Direct Examination

By Mr. Andersen:

Q. You have been sworn, Mr. Albright? When did you first learn that this dispute was in existence at the Juneau Spruce?

A. At the Mayor's Fact Finding Committee. I was called from Cordova.

Q. When was that?

A. The fore-part of May.

Q. The fore-part of May of 1947?

A. Last year. 1948.

Q. I mean 1948. Where had you been for the two or three months prior to May of 1948?

A. Cordova and Seward.

Q. Cordova and Seward? A. Yes, sir.

Q. Had you been in Juneau for two or three months prior to May of—put it this way: when was the last time prior to May, 1948, that you were in Juneau?

A. I passed through Juneau on the Denali in the latter part of December, sometime of 1947.

Q. Of 1947? A. That is right.

Q. Now, you say you came to Juneau then in the first part of May, is that correct? A. Yes, sir.

Q. Of 1948. Now, when you got here did you communicate with Local 16?

(Testimony of Verne Albright.)

A. Yes, they met me at the plane station. They had wired for me.

Q. They met you at the plane station. When you came here did you endeavor to assist them?

A. They asked me to and I did.

Q. That is Local 16? A. Local 16.

Q. From that time on while you were here in Juneau and in relation to the dispute, what was your capacity? How did you act and what was the nature of it?

A. I was representing Local 16 at their request.

Q. You were representing Local 16?

A. That is right. [923]

Q. And in that capacity did you have various meetings with various people? A. Yes, sir.

Q. And what were you endeavoring to do?

A. To reach a settlement in the dispute, a peaceable settlement.

Q. As representative of Local 16, you were endeavoring to reach a settlement? A. Yes, sir.

Q. Did you have meetings with Mr. Flint?

A. Yes, sir.

Q. And did you meet with other people here in town? A. Yes.

Q. Did you have a meeting with Mr. Flint together with a Mr. Garst? A. Yes, sir.

Q. And who was Mr. Garst?

A. The Federal Mediator, out of the Federal Mediation and Conciliation Service.

Q. Do you know how long he remained in town?

(Testimony of Verne Albright.)

A. About three days, something like that.

Q. You say he was Federal Mediator?

A. Yes.

Q. Did you have a meeting with Mr. Garst and Mr. Flint?

A. With Mr. Burtz and—— [924]

Q. Mr. Burtz and Mr. Flint?

Mr. Strayer: May we have the time?

Q. Do you recall the date of the meeting?

A. It was sometime during May, I don't just know the date.

Mr. Andersen: Could I have that exhibit? I think it is dated May 14—the pink letter, Mr. Clark.

Q. I show you Plaintiff's Exhibit No. 6, and you can look at the date on that and see if it refreshes your memory.

Mr. Strayer: May 6 is it? Is it, Mr. Andersen?

Q. May 15; it is Plaintiff's Exhibit 6.

A. Yes, I remember.

Q. You remember that meeting, do you?

A. Yes, sir.

Q. And Mr. Garst you say was there?

A. Mr. Garst and Mr. Burtz called me at the Gastineau and asked me to meet them at the Baranof, and I already had met with Mr. Card.

Q. Was Mr. Flint there?

A. Not at that time. I think he came in later in the evening.

Q. With respect to this letter dated May 14,

(Testimony of Verne Albright.)

were you asked to do anything with relation to this letter?

A. Yes. That proposal was brought out by Mr. Burtz and Mr. Garst asked me my opinion, and I told them I didn't think it would be satisfactory. Mr. Garst wanted to know if I would take it back to the local committee, and I did the [925] next day.

Q. Did the local act upon it? A. Yes.

Q. Did you have any further meetings with these people?

A. I believe this was on Sunday, and Mr. Garst left next day, I believe, or the day after that, without further meetings—for Los Angeles, which was his home town.

Q. He was here three days, the government mediator, and then he went back to Los Angeles?

A. That is right.

Q. Nothing was accomplished towards mediation while he was here? A. That is right.

Q. That was about May 14?

A. About that time.

Q. How long did you remain in town after that?

A. I was here off and on, with short trips out, practically all the summer.

Q. About what time did you leave?

A. I can't recall just what dates or what times —I made short trips—I went to Ketchikan once and over to Sitka one time, but I can't recall——

Q. You were here most of the time?

(Testimony of Verne Albright.)

A. Yes, most of the time.

Q. You would go around and then back? [926]

A. Yes. I was at Pelican City also.

Q. Do you recall if you had a subsequent meeting with Garst before he left, after the fourteenth?

A. He only met with us. He came down and shook hands and said he was leaving. He said he couldn't do anything and went as far as he could.

Q. In any event, he left without having settled the matter, is that true? A. That is right.

Q. After that meeting of May 14, did you again have any meeting with Mr. William Flint?

A. They were off and on meetings.

Q. In your same capacity, representing Local 16? A. That is correct, sir.

Q. And were you able to work anything out toward settling this matter? A. Nothing.

Q. In any of your conversations with him did you suggest arbitration? A. Yes.

Mr. Strayer: I object to that as immaterial.

The Court: Yes, it is immaterial.

Mr. Andersen: I beg your pardon, your Honor?

The Court: Objection sustained.

Mr. Andersen: As I recall Mr. Flint's testimony there were denials of it. With respect to Mr. Flint's testimony, it goes to the entire conversation, your Honor.

The Court: That may be, but the witness is not testifying to the rest of any conversation now.

Mr. Andersen: I can't hear your Honor.

(Testimony of Verne Albright.)

The Court: The witness is not testifying, as I understand his answer, or pretending to, to the rest of any conversation.

Mr. Andersen: That was the purport. I thought to save time by not asking all that was said.

The Court: The Court doesn't remember now every conversation by this witness or anybody else.

Mr. Andersen: If your Honor will recall, Mr. Flint first said he had one hundred conversations with Mr. Albright. After that he boiled it down to about four where there was really any conversation. We had this long to-do about Mr. Flint denying arbitration, then he admitted he was confused about negotiation and arbitration. With this witness I am endeavoring to clear that up.

The Court: It is not a matter of getting the rest of the conversation?

Mr. Andersen: To find out the entire conversation.

The Court: That applies where the adversary brings it out, and you brought it out on cross-examination.

Mr. Andersen: I will abide by your Honor's ruling, [928] if your Honor's ruling is that it is immaterial, that is all right with me.

The Court: Objection sustained.

Q. In all of these meetings with Mr. Flint, did you tell Mr. Flint, when the occasion arose did you tell Mr. Flint whom you were representing?

A. I always acted as representative of the local.

(Testimony of Verne Albright.)

Q. Did you tell Mr. Flint that?

A. Yes. He was aware of the fact.

Q. Did you ever tell anybody in this city that you would see that the pickets stayed on down there for ten years or twenty years or any other period of time, sir? A. Not that I can recall, sir.

Q. About May 8, did you talk to Mr. Flint about removing any picket lines.

Mr. Strayer: May 8 or 28, did you say, counsel?

Q. Eighth.

A. On the eighth—I can't recall if I talked on the eighth or a specific date, but one time there was discussion of removing the picket line.

Q. What was that?

A. We had a discussion pursuant to removing the picket line and letting the I.W.A. go back to work.

Q. When you use the word "we," on whose behalf are you speaking? [929]

A. I am talking of Local 16.

Q. Did you ever, during any of your visits here, during this dispute, did you ever have any authority or had you been given authority by the International Union, to, on their behalf or as their agent, participate in this dispute? A. No.

Mr. Strayer: I object to that as calling for a conclusion of the witness. The exhibit in evidence, the Affidavit of Mr. Albright, states all his authority was in the form of oral instructions from Mr. Bulcke. He is entitled to testify what the oral in-

(Testimony of Verne Albright.)

structions were, but not a conclusion as to what his authority may have been.

Mr. Andersen: My question was general, may it please the Court.

The Court: Will you repeat the question?

Court Reporter: "Did you ever, during any of your visits here, during this dispute, did you ever have any authority or had you been given authority by the International Union, to, on their behalf or as their agent, participate in this dispute?"

A. No.

The Court: The objection is overruled, anyhow.

Q. Did Mr. Flint ever talk to you about advice in relation to I.W.A., do you recall?

A. Not that I recall. [930]

Mr. Andersen: You may examine.

Cross-Examination

By Mr. Strayer:

Q. As I understand you, Mr. Albright, your testimony is that everything you did in connection with this dispute you did at the request and on behalf of Local 16? A. That is correct.

Q. And you had no instructions whatever from San Francisco in that regard?

A. That is right.

Q. You testified the other day that you were employed by the International Longshoremen's and Warehousemen's Union?

A. That is correct.

(Testimony of Verne Albright.)

Q. And you draw your salary from the international? A. Correct.

Q. You testified your territory, I believe, was Alaska? A. Correct.

Q. And that you were supposed to assist and advise all the locals in the Territory of Alaska?

A. When they so request me to represent them.

Q. And give them such assistance as you can?

A. Correct.

Q. Those are your instructions?

A. Correct. [931]

Q. As the result of that you travel around a good deal from one local to another?

A. That is right.

Q. I think you said during the summer of 1948 you traveled to Ketchikan, Sitka, Pelican City and other places? A. Right.

Q. Those trips you took on behalf of Local 16?

A. No.

Q. Whose?

A. When one of those locals would request me to come it was in their behalf.

Q. Did you make a trip to Prince Rupert in August, 1948, on behalf of Local 16?

A. On behalf of all the Alaska locals.

Q. On behalf of all the Alaska locals you went down to Prince Rupert? A. That is correct.

Q. Was it on business of Local 505 of Prince Rupert?

A. It had something to do with that.

Q. It had a great deal to do with Local 16?

(Testimony of Verne Albright.)

A. Correct.

Q. To see that lumber was not unloaded at Prince Rupert? A. It did not.

Q. It had nothing to do with that?

A. That is right. [932]

Q. Did you arrive there before the barge got there? A. I think it was the day before.

Q. Was the barge there when you got there?

A. I think not.

Q. The barge got there while you were there, then? A. I think it did.

Q. You took Mr. Joe Guy with you, or did he go a different way?

A. He went on his own. I didn't take him with me.

Q. Did he arrive at the same time you did?

A. I think he did.

Q. Was he there on union business too?

A. I don't know what he was down there for.

Q. You were there during the time the barge was there, were you?

A. The barge was there when I left.

Q. Did you talk to the longshoremen down there regarding the labor troubles up here at Juneau?

A. No.

Q. You didn't say a word to them about it?

A. No.

Q. You didn't talk about the trouble Local 16 was having with Juneau Spruce Corporation?

A. No. I had other business there.

(Testimony of Verne Albright.)

Q. That had nothing to do with what you went down there for? [933] A. No.

Q. Did you leave the same day the barge left?

A. I don't know when the barge left.

Q. Where were you prior to going to Prince Rupert?

A. In Ketchikan, I was there three weeks prior.

Q. Prior to going to Prince Rupert?

A. That is right.

Q. Did you have any communication from Local 16?

A. Not to my knowledge—that I can recall, I should say.

Q. You don't recall any telephone calls or correspondence? A. No.

Q. You destroy all correspondence, so you wouldn't know for sure?

A. That is not the reason I destroy correspondence.

Q. But you don't have any correspondence?

A. Yes.

Q. One of your duties is to make reports to Mr. Bulcke in San Francisco regarding your activities?

A. To the International.

Q. Do you make that report every two weeks?

A. Once a month or every two weeks.

Q. Did you make a report regarding this dispute at Juneau?

A. I told them the general progress of it.

Q. How often did you make reports to San

(Testimony of Verne Albright.)

Francisco regarding the dispute between Local 16 and Juneau Spruce Corporation? [934]

A. Only as part of the general report I made concerning other locals in the Territory and other issues.

Q. You keep them advised of all progress or lack of progress up here? A. Right.

Q. And you told them what about it?

A. As near as I could.

Q. And you passed on to the International what you understood the facts to be about the dispute?

A. That is correct.

Q. You don't have, as I understand it, any copies of those reports you made to the International? A. I have not.

Q. Or you don't have any of the letters you received from the International in return?

A. No, sir.

Q. It is a fact, is it not, Mr. Albright, all the way through this dispute in the summer of 1948 you acted as spokesman for Local 16 in these matters? A. Whenever they asked me.

Q. Whenever you had a meeting you acted as spokesman? A. At their request.

Q. And on July 4, 1948, you appeared before the C.I.O. Industrial Union Council to speak on behalf of this Local 16, did you not? [935]

A. I can't recall. I think I did.

Q. You spoke in favor of passing a resolution, didn't you, at that time?

A. I merely stated the issues of the dispute as

(Testimony of Verne Albright.)

I seen them. I had no authority in the Council. I am not a member.

Q. Did you recommend a resolution in support of Local 16?

A. I couldn't recommend anything. I was not a delegate to the Council. I had no authority.

Q. Do you recognize this, Mr. Albright, as a copy of the resolution passed by the C.I.O. Industrial Council on that date? A. Yes, sir.

Mr. Andersen: May I see it?

Mr. Strayer: Yes. May we have it marked, please?

(Whereupon the exhibit was marked Plaintiff's Exhibit No. 23 for identification.)

Q. Plaintiff's Exhibit No. 23 for identification is a copy of the resolution that was passed?

A. That is right.

(Whereupon counsel for plaintiff handed the exhibit to Mr. Andersen.)

Q. And after this resolution was passed by the Industrial Union Council, isn't it a fact that you——

Mr. Andersen: I am going to object to any use of the resolution. It is not in evidence. It has nothing to do with [936] this. It is incompetent, irrelevant and immaterial.

Q. Isn't it a fact after its passage you took it to the newspaper and asked the newspaper to publish it here in Juneau?

Mr. Andersen: The same objection.

The Court: Objection overruled.

(Testimony of Verne Albright.)

A. I don't believe I took it to the newspaper. I think a committee of the longshoremen or the Industrial Council did, but I didn't.

Q. You deny you took it there? A. Yes.

Q. Who was the committee that took it down?

A. I do not recall.

Q. Any of them? A. I don't recall.

Q. Was it this present Industrial Union Council?

Mr. Andersen: I object.

Mr. Strayer: I offer it in evidence.

Mr. Andersen: The same objection. Mr. Albright's name isn't mentioned, nor is he referred to in it.

The Court: What is the purpose of the offer?

Mr. Strayer: The purpose of the offer, your Honor, is to show the participation by Mr. Albright in the action of Local 16 and of Mr. Albright himself in inducing the C.I.O. council itself in condemning the I.W.A. and supporting the [937] I.L.W.U., and because the publication——

Mr. Andersen: There is nothing in the document to show Mr. Albright induced anything.

Mr. Strayer: I think it is a matter of inference. He said he spoke and gave them what he thought was the facts.

Mr. Andersen: That doesn't follow at all, may it please the Court. The Industrial Union Council here, as I understand it, is composed of many unions which, I further understand, is an autonomous body which does as it pleases.

(Testimony of Verne Albright.)

The Court: That objection goes to the weight, but I think it is admissible. It may be admitted.

(Whereupon the exhibit was marked Plaintiff's Exhibit No. 23.)

Mr. Andersen: I further object to it as hearsay, incompetent, irrelevant and immaterial, may it please the Court, and no foundation has been laid for its introduction.

Q. May I ask you another question about the resolution. Didn't you give a copy of that resolution to a newspaper reporter here in Juneau?

A. It could be, but I don't recall.

Q. Don't you recall you gave a copy to Robert Druxman and asked him to publish it?

A. I don't think I did.

Q. You have no recollection of having given it to him? A. That is correct. [938]

Q. To refresh your recollection, let me ask you didn't you meet Bob Druxman on the street after July 4, the date of this resolution, and ask him to write a story to put in the paper about this resolution? You have no recollection of that?

A. No.

Q. Isn't it a fact he asked you to furnish him with a copy of the resolution and you went and got a copy and went and brought him a copy?

A. He might have asked for a copy, but I didn't ask him to write a story.

Q. You don't recall that?

A. I didn't ask him to write a story.

(Testimony of Verne Albright.)

Mr. Strayer: I will read this if I may, your Honor, It says: "July 4, 1948. Resolution Condemning the Strikebreaking Action of Certain Officers and Members of I. W. A. Local M-271, of Juneau, Alaska.

"The Juneau Industrial Union Council, C.I.O., an organization composed of delegates from all C.I.O. Locals within the City of Juneau, Alaska, held a special meeting on July 4, 1948, and discussed the action taken by certain officers and members of I.W.A. Local M-271, Sawmill Workers, C.I.O. After considerable discussion by the delegates to the Council it was the unanimous opinion that should the Council permit such action by any members of its C.I.O. affiliates to go unchallenged [939] or for such members to escape the responsibility of their acts would be to jeopardize all the gains and conditions established in the past by organized labor, and the following resolution was adopted: Resolution

"Whereas: Certain officers and members of I.W.A. Local M-271, Sawmill Workers C.I.O., have publicly stated that they will return to work at the mill of the Juneau Spruce Corporation in disregard of the picket lines established by the I.L.W.U. Local No. 16;

"Whereas: The picket line is the only weapon available to organized labor when negotiations fail or the employer refuses to bargain; therefore, these certain officers and members of I.W.A. Local M-271, Sawmill Workers, C.I.O., are guilty of attempting to destroy the only economic weapon of labor, which act is a direct violation of the principles of good union-

(Testimony of Verne Albright.)

ism and as such is abhorrent to, and condemned by, all labor; and

"Whereas: No labor organization can condone such action by any of its members, and inasmuch as any union member acting as a strike-breaker must assume the full responsibility of his act; therefore,

"Be It Resolved: That the Juneau Industrial Union Council go on record as condemning the action of these certain officers and members of the I.W.A. Local M-271, Sawmill Workers, C.I.O., as that of strike-breaking; and [940]

"Be It Further Resolved: That the Juneau Industrial Union Council highly commend the action of those officers and members of I.W.A. Local M-271, Sawmill Workers, C.I.O., who have loyally and justifiably refused to participate in the above action; and

"Be It Finally Resolved: That copies of this Resolution be sent to the National CIO, to all State and Territorial Industrial Councils, and to all Central Labor Councils, and also be released to the press and radio. Juneau Industrial Union Council. Fred Orme, Secy-Treasurer. Seal."

Q. Mr. Albright, I will ask you if it isn't the effect of the passage of this resolution and dissemination of it to blacklist those who passed the picket line?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial.

The Court: You might ask him if he knows.

Mr. Andersen: The same objection, and calling for a conclusion of the witness. It is improper cross-examination.

(Testimony of Verne Albright.)

The Court: Objection overruled.

A. I wouldn't know.

Q. You don't know? A. I don't know.

Q. How long have you been engaged in Union matters, Mr. Albright—actively engaged?

A. In Local I.L.W.U., Local 62, since 1941. I have been a [941] member since then to the present date.

Q. 1941. Were you engaged in Union activities before that time?

A. Before that, here and there.

Q. You have been a Union man all your life?

A. Not all my life.

Q. You have been an International Representative of I.L.W.U. since when?

A. Since the tenth of November, 1947.

Q. And yet you don't know——

The Court: Since when—what was that date?

A. The tenth of November, 1947.

Q. You don't know the effect of branding a man as a strikebreaker?

Mr. Andersen: I object to that. It is argumentative.

The Court: It is not argumentative. Objection overruled.

A. To answer that question you ask me, if this resolution—if I knew the effect it had, I don't know. I don't know how far it was disseminated around the country. I have no knowledge.

Q. Answer my question. Do you know the effect of branding a man as a strike-breaker?

(Testimony of Verne Albright.)

A. I wouldn't want to be one. I don't think it is honorable.

Q. What is the effect if he wants to get a job?

Mr. Andersen: I object to that as incompetent, irrelevant, immaterial, and calling for a conclusion, and it is argumentative.

The Court: He may answer if he knows.

A. That is hard to answer, very hard. I wouldn't know for sure the extent of it.

Q. You just don't know? You acted as spokesman for Local 16 before the Mayor's Fact-Finding Committee? A. Correct.

Q. And stated the position of the Local Union for that body's consideration? A. Correct.

Q. The first part of May?

A. The first part of May; the fore-part of May.

Q. Didn't you tell the Mayor's Fact-Finding Committee that the dispute with Local 16 was only the beginning? Didn't you intimate if the Longshoremen lost this dispute with the Juneau Spruce that this same demand would be made by other employers in Alaska?

Mr. Andersen: I object to that as speculative.

The Court: The question is what he said.

Q. Did you say that then?

A. I can't recall any such conversation or such remark. I think that what you have got in mind—only you have twisted it—I said at the meeting this might be a start. It is an [943] upset in the practice in Alaska and might immediately spread to other

(Testimony of Verne Albright.)

ports and other Unions, and other companies might demand the same thing.

Q. It was true, wasn't it, in your opinion?

A. That is right.

Q. You were confronted about that time or shortly after that with the same or similar situation in Sitka, were you not?

Mr. Andersen: I object. Reference to Sitka is not within the direct examination.

The Court: It goes to his relations with the defendant. Objection overruled.

A. What instance in Sitka?

Q. I am talking about an argument between the Longshoremen and the lumber company over the right to load barges.

Mr. Andersen: In Sitka, counsel?

Q. In Sitka.

A. In Sitka—I made a trip in 1948 over there, but it was concerning the barges and sizes of gangs on the barges. I sat with the Local and the local sawmill. It was not over this part of it.

Q. Isn't it a fact there was a dispute there which arose in part at least because the sawmill workers were loading lumber on barges?

Mr. Andersen: I object to that. It is improper cross-examination. It isn't a discussion now about authority, but entirely different.

The Court: It goes to his relations with the defendant, I.L.W.U.

A. I never made a trip over there on a dispute.

(Testimony of Verne Albright.)

Q. I don't care if you did or not, I am asking if there wasn't such a dispute up there?

A. Not that I ever took part in.

Q. Don't you know there was such a dispute?

A. No.

Q. Didn't you testify before the National Labor Relations Board that there was?

A. I said it could be possible there was such a dispute.

Q. Well, let's see what you said. You remember testifying before the National Labor Relations Board? A. Yes, that is true.

Q. I am reading from page 464. I will ask you if this question was asked and the answer given by you. Question by Mr. Paul, "Is there any difficulty or labor dispute existing or claimed at Sitka, regarding barge loading?" A. "Yes, two barges left there loaded by sawmill workers." Does that refresh your memory?

Mr. Andersen: You should——

Q. "I received this complaint by wire from there quite some time ago and the other one just recently. The Longshoremen were not aware what a true registered dispute is." Do [345] you recall giving that testimony?

A. I don't. If it is in the record, I must have.

Q. Does that refresh your memory, that you do have knowledge?

A. No. Perhaps such a dispute did exist, innumerable disputes occur.

Q. Isn't it a fact after Mr. Card presented this

(Testimony of Verne Albright.)

letter suggesting a proposal for settlement of this dispute by the Juneau Spruce Corporation, May 14, 1948, isn't it a fact you suggested certain changes in the letter? Do you recall that?

A. I suggested certain changes which they tried to get, but Mr. Card wouldn't consent to it.

Q. Isn't it a fact you suggested certain changes in this letter and the matter was sent back to Mr. Card and he drew up a new letter and incorporated the very changes you asked for? A. Not correct.

Q. It is not?

A. He made a change, but not the changes I requested.

Q. Now Mr. Banfield has put a parenthesis around a clause in this letter, "Nets, Gear, Pallet Boards, Etc." As a matter of fact, the only change you wanted was to add in those letters which are now in parenthesis?

A. No. I asked that that type of longshore work be pencilled out and that is the way they did it, and I told them it was [946] not satisfactory.

Q. Not satisfactory to you?

A. That is right; that I would take it back to the Local committee.

Q. Didn't you tell Mr. Burtz when you were talking about this letter, didn't you tell him you had heard from the International and didn't dare sign this letter because it would upset the whole set-up in Alaska?

A. I don't recall that conversation.

Q. Didn't you tell Mr. Burtz you would have to

(Testimony of Verne Albright.)

maintain that p.;ket line at all costs? A. No.

Q. There was no such conversation?

A. That is right.

Q. Didn't you go to a meeting that night, Mr. Albright, and tell the people at that meeting, including Mr. Burtz, Mr. Flint, the I.L.W.U. and I.W.A. representatives, and tell them you had a telephone call from the International and the Local had a letter from San Francisco headquarters, and the whole deal was off, you couldn't go through with it because it would establish a bad precedence?

Mr. Andersen: Which night?

Mr. Strayer: The same night.

Mr. Andersen: May 14?

Mr. Strayer: The fourteenth. [947]

A. I don't recall a meeting of that kind or that conversation.

Q. You don't recall? A. No, sir.

Q. You considered that if you agreed to the terms of this letter it would have set a bad precedence?

A. I merely said I didn't believe it would be acceptable to the committee. The next day the committee turned it down. I don't have authority to say. It is the rank and file, the committee of the Local, the rank and file.

Q. Do you recall your testimony at the Unemployment Compensation Commission hearing in connection with this dispute?

A. It is quite a long time ago.

Q. You appeared there? A. Yes.

(Testimony of Verne Albright.)

Q. As a representative of the Longshoremen, did you not? A. That is right.

Q. Do you recall testifying before that body, Mr. Roden, I believe, was in charge of that hearing?

A. That is right.

Q. Do you recall testifying that the I.L.W.U. had a dispute with the Juneau Spruce Corporation?

A. That is right, a dispute.

Q. You were talking about the International?

A. Local 16.

Q. Did you tell them Local 16? [948]

A. I said "I.L.W.U." That is common practice. I.L.W.U. means the Local.

Q. Let's see just what your testimony was, page 16.

Mr. Paul: The first half?

Q. About the middle of the page. Mr. Albright, I will ask you if this series of questions and answers was given at that hearing, Mr. Roden asking the question. "What is your official position?" Answer. "International Representative for the International Longshoremen's and Warehousemen's Union." Mr. Burtz asked you "Does your organization have a dispute with the Juneau Spruce Corporation?" Answer. "Yes, sir." Do you recall giving that testimony?

A. That is right, talking from the point of Local 16, that was the understanding.

Q. Turn over to the next page, page 17. Were these questions asked and these answers given: Mr.

(Testimony of Verne Albright.)

Burtz asked, "Is your organization recognized throughout the United States, Canada and Alaska as having jurisdiction over the loading of cargo on seagoing vessels?" Answer, "On the West Coast we are." Were you still talking about Local 16?

A. The I.L.W.U. as a whole; yes.

Q. Mr. Burtz asked, "How long has the I.L.W.U. Local No. 16 furnished employees for the loading of lumber from the Juneau Spruce Corporation or its predecessor?" Answer, "Approximately ten years." Do you recall giving that [949] testimony?

A. That is right.

Q. Mr. Burtz asked, "No one questioned your right as Longshoremen to perform that work?" Answer, "No." Mr. Burtz asked, "Is the present dispute with the Juneau Spruce Corporation because the Company will not establish wages or working conditions, or what is the argument?" Answer, "They refuse to recognize us." Do you recall giving that testimony? A. I think that is correct.

Q. Were you still talking all the time about Local 16? A. That is right.

Q. Mr. Burtz asked "Did they make a public statement that if you were legally certified they would recognize you?" Answer, "I understand they did." Do you recall giving that testimony?

A. Yes, I think that is correct.

Q. Certification, of course, refers only to the International, doesn't it? A. No, sir.

Q. All right. Mr. Burtz asked, page 18, "They are

(Testimony of Verne Albright.)

hiding behind technicalities and have an unfair labor dispute with your organization?" Answer, "That is correct." Do you recall giving that testimony?

A. If it is in the record, if it is correct. [950]

Q. Still talking about Local 16, no reference to the I.L.W.U.? A. That is right.

Q. Just how does this I.L.W.U. function with its Locals? I am speaking particularly with reference to the charters. Are Locals chartered by the International?

A. They are given to the Local as an affiliate.

Q. Local 16 holds a charter from the International? A. Yes.

Q. And Local 505 at Prince Rupert also holds a charter from the International?

A. I think so. I have not seen it.

Q. Members of the Local are members of the International? A. Of the Local.

Q. That entitles them to the benefits of the International? A. Services of the International.

Q. Your contracting system, Mr. Albright, here on the West Coast—your International is the one that negotiates your contracts, is it not?

A. They do, and I think you will note it is on behalf of the Locals.

Q. The contract which applies on the Pacific Coast is written in San Francisco? A. Right.

Q. By Mr. Bridges, Mr. Bulcke and—I have forgotten the others?

A. Quite a number from the Coast. [951]

(Testimony of Verne Albright.)

Q. That master Coast contract applies all up and down the Pacific Coast? A. No, sir.

Q. It does not? A. No.

Q. Does it apply in Alaska?

A. We have an all-Alaska contract agreement.

Q. The contracts down there don't apply to Alaska?

A. Supplementary; we work here under the Alaska Longshoremen's Contract.

Mr. Andersen: I object to any further reference to the content of those agreements unless they—because they would be the best evidence of what they contain. The agreements are on the desk, which I offer. It is D for identification. That is the best evidence of what it contains regarding Alaska. I object.

Mr. Strayer: I am merely inquiring about the method of negotiating contracts.

Mr. Andersen: It is set forth in the contract itself and also in the Constitution.

The Court: I wouldn't think the method only, but what is agreed by the contracts. Objection overruled.

Q. You were just explaining to me, Mr. Albright, about the Alaska contract. How is that negotiated?

A. It is negotiated by—it is usually done in [952] Seattle or where the steamship operators are most available. We generally go where they most want us to. It is usually negotiated by some of the International Negotiation Committee on behalf of the Locals, subject to the ratification of the Locals in Alaska.

Q. Who acts on that Negotiation Committee down there?

(Testimony of Verne Albright.)

A. They are never the same. Generally the International officers, the Executive Board members, or whoever happens to be available—different negotiators.

Q. Did Mr. Bulcke negotiate one?

A. August 23, the greatest part of it.

Q. Do you read "The Dispatcher"?

A. Quite often.

Q. Is "The Dispatcher" the official newspaper of the International Longshoremen's and Warehousemen's Union? A. That is right.

Q. That is a copy of "The Dispatcher," is it not?

A. That is correct.

Mr. Strayer: Let me have this marked for identification, please.

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit No. 24 for identification.

Mr. Andersen: May I see it, counsel?

Q. It is dated September 17, 1948; is that [953] correct?

Mr. Andersen: May I see it, counsel?

Mr. Strayer: Certainly. I want to identify it here first.

A. September 17, 1948; yes, sir.

Mr. Andersen: Do you refer to any particular portion?

Mr. Strayer: Yes, I am going to.

Mr. Andersen: Will you show it to me?

Mr. Strayer: Yes.

(Testimony of Verne Albright.)

Q. I refer you to page 6 of this issue of "The Dispatcher," which you have identified as "The Dispatcher" for September 17, 1948—withdraw that. This appears here that it is published every two weeks at 150 Golden Gate Avenue, San Francisco. Is that your understanding? A. That is correct.

Q. And according to the masthead that Harry Bridges is President, J. R. Robertson, First Vice President, Lincoln Fairley, Research Director, Louis Goldblatt, Secretary-Treasurer, Germain Bulcke, Second Vice President, and Morris Watson, Information Director. Are you acquainted with those officers? A. Yes, sir.

Q. And Morris Watson appears to be the Editor?

A. That is correct.

Q. Page 6—I ask you, did you furnish the information upon which this article was prepared? [954]

Mr. Andersen: That would obviously call for a conclusion and opinion of the witness. None of the articles there purport to be written by the witness.

Mr. Strayer: I am merely finding out if he furnished information, the same as in this article.

Mr. Andersen: I can't see the relevancy.

The Court: He may answer if he knows, if he furnished the information.

Mr. Andersen: He doesn't know, from what it says there.

The Court: If he doesn't know, he can say so.

A. It could have come in from the Local. They usually send in news reports.

(Testimony of Verne Albright.)

Q. My question is, did you furnish the information? A. For that article?

Q. Of the same character as in this article?

A. No, it wasn't necessary. The Secretary of the Local actually acts as Corresponding Secretary and corresponds with the Editor of the paper and sends information to the paper. Usually that is their request.

Q. Did you send the same information to your superior as appears in this article?

A. Let's see that again, please.

Q. I would like to have you read the following article while you are at it. [955]

Mr. Andersen: I object. It calls for a conclusion and opinion of the witness.

Mr. Strayer: Only if he knows.

The Court: He ought to know if he furnished the same or similar information.

A. This is better writing than I do. I do know about this Alaska contract. I merely wrote——

Mr. Andersen: That isn't the question. The question is whether you supplied that information?

A. No.

Q. You did not supply the same information?

A. That is right.

Q. But did, regarding the Alaska contract?

A. And that it had been ratified and they were pleased with it.

Mr. Strayer: We will offer this issue of "The Dispatcher" in evidence as an admission against interest

(Testimony of Verne Albright.)

of the I.L.W.U. Counsel has seen it. The article is here.

Mr. Andersen: To which I will object as incompetent, irrelevant and immaterial, and also, may it please the Court, I may be in error, but I know of no law which permits him to offer that for any purpose. It is either in evidence or it isn't. It may not be for a particular purpose. It is either admissible or inadmissible. If he offers the paper in evidence I am entitled to read the whole thing. [956]

The Court: If it is for a specific purpose it is limited to that purpose, although you can introduce the rest of it on your case. The only question, as I see it, is whether this constitutes an admission of the I.L.W.U. You offer it for that purpose?

Mr. Strayer: Yes, your Honor.

The Court: It may be admitted for that purpose only.

Mr. Strayer: May I put a pencil line around the article my offer is limited to, so there will be no misunderstanding what portion is offered?

The Court: Very well.

Mr. Andersen: Why not just read that portion into the record?

Mr. Strayer: That is what I was going to do. If you have no objection, I will do that.

Mr. Andersen: We object that it is incompetent, irrelevant, immaterial, and no foundation has been laid.

The Court: Objection overruled on the grounds stated.

(Testimony of Verne Albright.)

Clerk of Court: The exhibit has been marked Plaintiff's Exhibit No. 24, page 6.

Mr. Strayer: Page 6. The article on page 6 of this "Dispatcher," dated September 17, 1948, reads as follows: "Unfair Charges"——

Mr. Andersen: Will you please read the name of the person who wrote it? It is at the head of the [957] column, I believe.

Mr. Strayer: I don't see it.

Mr. Andersen: I thought I saw it there. It is under this heading there, "Seattle Watchmen."

Mr. Strayer: Sort of a pen name, do you mean?

Mr. Andersen: I don't know, but it says "Seattle Watchmen."

Mr. Strayer: I don't know what the reference is. Up at the lefthand column it says "Seattle Watchmen" and in the middle of the page is the article I would like to read, "Unfair Charges. A Taft-Hartley hearing against Local 16 is scheduled for Juneau, Alaska, September 21. The I.L.W.U. is charged with unfair labor practices for picketing the Juneau Spruce mill, which insists on using members of the International Woodworkers of America for longshore work on its barges and scows, contrary to practice established in 1941.

"The I.L.W.U. struck the mill last April after trying for months to get a contract with new purchasers, the Juneau Spruce Corporation, for longshore work on the same terms as the rest of the port.

"The Company signed with the I.W.A. for mill

(Testimony of Verne Albright.)

work alone, then in January ordered I.W.A. members to load lumber on its barges. In spite of conferences with the I.L.W.U. and statements from the I.W.A. that it did not want this work, the mill refused to negotiate with regular longshoremen. [956]

"When the I.L.W.U. hit the bricks, the I.W.A. respected the picket lines fully. The mill was shut down tight. Company charges of unfair labor practices were thrown out by the N.L.R.B.

"Then Bill Flint, President of the Juneau I.W.A. Local, was sent to Portland at the expense of Juneau Spruce to confer with I.W.A. International President James Fadling. He returned to Juneau with orders to his members from the International to disregard I.L.W.U. pickets in line with the Company's wishes. A number went back to work on pain of losing their jobs and seniority, enough to enable the Company to resume operations.

"Local 16 is maintaining its picket lines to protect its jurisdiction of longshore work in the mill. I.L.W.U. Second Vice President Germain Bulcke has informed all Canadian I.L.W.U. Locals that Juneau Spruce Mill products are unfair."

Q. Now, what is the effect, Mr. Albright, in Union circles, of declaring products of the Company unfair?

Mr. Andersen: The same objection, may it please the Court, calling for a conclusion and opinion of the witness; incompetent, irrelevant and immaterial. Could I have the number of that last exhibit, Mr. Clerk?

(Testimony of Verne Albright.)

Clerk of Court: Twenty four.

The Court: Objection overruled.

A. Well, it is pretty hard to tell just exactly the effect [959] taken.

Q. No good Union man will handle a product which your International says is unfair?

A. The law forces——

Q. Will Longshoremen handle a product which your International headquarters says is unfair?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial, and calling for a conclusion and opinion of the witness.

The Court: Objection overruled.

A. We are forced to under the law.

Q. Will you answer the question?

Mr. Andersen: I submit, does he want the witness to say he is not law abiding?

The Court: He apparently is not satisfied with a legal phrase. Objection overruled.

Q. Will members of your organization handle a product which your International says is unfair?

A. I can't answer the question, only that we don't violate the law. We are prevented from it.

Q. You want the jury to understand the Longshoremen will handle Juneau Spruce lumber then?

A. Down below?

Q. Yes.

A. I don't know what course they would take—I know what [960] course Canada's Longshoremen took—the steps taken are what you people say, but in the States—it didn't go to the States.

(Testimony of Verne Albright.)

Q. You know what course Canada's Longshoremen took?

A. But they are under a different law.

Q. As the result of Mr. Bulcke informing all the Canada Locals that Juneau Spruce products were unfair?

Mr. Andersen: I object.

The Court: He can ask him if he knows.

A. I don't know.

Q. You have no information at all? A. No.

Q. Have you been in touch with Mr. Berry down in Vancouver?

A. Occasionally, over the phone.

Q. About this particular labor dispute?

A. No; not over the phone.

Q. Didn't you talk with Mr. Berry recently about the effect of the National Labor Relations Board decision? A. Down in San Francisco?

Q. When you were attending the convention of the International? A. Yes.

Q. In April? A. The first part of April.

Q. As International Representative? [961]

A. As a visitor.

Q. And Mr. Berry was in the same capacity?

A. That is right.

Q. Did you talk with him at that time?

A. Yes.

Q. And you discussed the decision of the National Labor Relations Board?

A. I don't remember. The fact is, I don't think we had the decision when I was down there.

(Testimony of Verne Albright.)

Q. The decision came down about April 1, did it not?

A. I don't think I heard it or seen it until after the convention was over.

Mr. Andersen: I think you are both right. I think it came out a little bit later than that. It always takes several days for the National Labor Relations Board to get them out, Mr. Strayer.

Q. It appears to be dated blank day of March. Assuming it came out around the first of April, you don't think you knew about it at the time you were talking with Mr. Berry? A. No, I don't.

Q. Did you send a telegram to Mr. Berry after the National Labor Relations Board decision?

A. No.

Q. Did you either see him personally, or telephone him or telegraph him that the National Labor [962] Relations Board decision didn't make any difference?

A. No.

Mr. Andersen: I assume this is again subject to the extra-territorial objection I made before?

The Court: The same ruling.

Q. You never did? A. No.

Q. You never talked to him about it. Let me ask you a question on this article. Did you recommend Mr. Bulcke inform the Canada Locals that the Juneau Spruce was unfair?

A. I didn't recommend anything to Mr. Bulcke.

(Testimony of Verne Albright.)

Q. You gave the facts and he made his own recommendation? A. I didn't.

Q. You told him there was a strike up here at the Juneau Spruce mill? A. He was aware of that.

Q. You told him the Juneau Spruce Corporation had taken over the operation from Juneau Lumber Mill? A. Correct.

Q. And did you tell him that the Company signed with the I.W.A. for mill work alone, and then in general ordered the mill workers to load lumber on its barges?

A. I don't believe I went into details that way. I merely stated at different times, different parts of the dispute. [963] I can't recall I sent in any of that information.

Q. Did you tell him the Longshoremen had always done that work before? A. Undoubtedly.

Q. Did you tell him that the process of loading lumber on barges and shipping by barges was a new operation with this new Company?

A. I don't remember that.

Q. That is a fact, is it not?

A. I don't consider it a new operation. It happens at other ports, maybe not in this port.

Q. In this case?

A. I think it is a new type or way of handling lumber.

Q. You didn't consider there was any difference?

A. No; it still goes into commerce.

Q. You consider the Juneau Spruce Corporation

(Testimony of Verne Albright.)

is bound by any contract or practice which may have been followed by the predecessor?

A. That is right.

Q. And that was your position all the way through?

A. That is the way all work is based, for the employee to work.

Q. Did you report that view you had to Mr. Bulcke?

A. I didn't think it was necessary to report it.

Q. Did you? [964]

A. I didn't think it was necessary to report it.

Q. Whether it was necessary or not, did you report it? A. No.

Q. Did you report to Mr. Bulcke about Bill Flint going down to Portland?

A. I cannot recall. I don't believe I did.

Q. You don't think you told him anything about that? A. No.

Q. Did you tell Mr. Bulcke about Mr. Flint coming back from his International, about his orders from his International about his men going back to work?

A. Yes, I think I reported when they did go to work.

Q. You reported to Mr. Bulcke?

Mr. Andersen: May it please the Court, this article is dated May 17.

Mr. Strayer: September 17.

Mr. Andersen: I thought you said May 17.

(Testimony of Verne Albright.)

Q. Did you report to Mr. Bulcke the number of I.W.A. men who went back to work on pain of losing their jobs and seniority?

A. No, I don't think so.

Q. You don't know where he got that information? A. No.

Mr. Strayer: I think that is all.

Mr. Andersen: Is that all? [965]

Mr. Strayer: That is all.

Mr. Andersen: No further questions. You may step down.

(Witness excused.)

(Whereupon the jury was duly admonished and Court adjourned until ten o'clock a.m. May 11, 1949, reconvening as per adjournment with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:)

Mr. Andersen: May it please the Court, at this time I wish to renew my motion to strike evidence in relation to the I.L.W.U. that I have been making with respect to each witness. I would like to submit it at this time.

The Court: The same ruling.

Mr. Banfield: We would like a statement of counsel as to when he expects to rest the defense so we will have some idea when to have the instructions ready.

Mr. Andersen: We will be through at quarter of eleven.

The Court: Perhaps you should arrange now to get your rebuttal witnesses here.

Mr. Banfield: I will have to do that.

Mr. Andersen: Mr. Banfield and I, or Mr. Strayer and I discussed the matter of documents introduced in evidence. I presume the usual practices, either party may read them [966] even though not actually read at the time the witness was on the stand?

The Court: Yes.

Mr. Andersen: Your Honor seemed to be ruling that it should be done while the witness was on the stand.

The Court: That is only so far as the taking of testimony for the trial, so to speak, is concerned, but so far as exhibits, the reading of matters in evidence at the argument, it may be done.

Mr. Andersen: I just wanted to understand it.

LEONARD EVANS

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Andersen:

Q. Mr. Evans, what is your full name?

A. Leonard Evans.

Q. And do you live here in Juneau?

A. Right.

Q. What is your position at the present time?

A. Territorial Representative, United States Department of Labor.

(Testimony of Leonard Evans.)

Q. How long have you held that position?

A. Since May 1, 1948.

Q. And prior to that time what was your position? [967]

A. Deputy Commissioner in the Territorial Department of Labor.

Q. How long had you held that position?

A. Since January 6, 1947.

Q. And prior to that time what had you done? Had you been in the Territory prior to that time?

A. Since approximately April 15, 1944, in the Territory, working in the United States Department of Labor as Wage and Hour Inspector.

Q. You, of course, are somewhat familiar with this dispute at the Juneau Spruce Corporation, are you not? A. I think so.

Q. Now, on or about April 10 of 1948, did you have a meeting with Mr. Hawkins?

A. The dates are not clear in my mind. It is possible that April 10, 1948, was a Sunday, so I wouldn't be exact on the day, but during the period immediately after this dispute occurred I called on Mr. Hawkins at the Company office.

Q. Did you have a conversation with Mr. Hawkins at that time? A. Oh, yes.

Q. Did you subsequently render a report, make a report regarding that discussion?

A. Yes. I was assigned as a conciliator and was to report back to Mr. Benson, Commissioner of Labor; yes. [968]

(Testimony of Leonard Evans.)

Q. Have you recently read the report—strike that. After your interview with Mr. Hawkins, did you make a report of what occurred at that meeting?

A. Yes.

Q. Have you read that recently?

A. I have reviewed it recently; however, I think it should be pointed out that—if I remember correctly—I made prior visits to the Company office either earlier or later. I made other visits to the Company office on the same matter.

Q. About how many visits did you make to the Company?

A. A combination of visits and phone calls, not less than four.

Q. Were they all in your capacity as representative of the Territorial Labor Department?

A. Yes.

Q. Do you recall your conversation with Mr. Hawkins on that day?

A. Some parts of it I recall quite well.

Q. Do you recall whether he mentioned anything or not about closing the plant at that time?

A. It was a phrase that was in general use; yes.

Q. Let me show you.

Mr. Andersen: Have you seen this before, Mr. Banfield? (Showing document to counsel for plaintiff.) [969]

Q. I will show you a copy of the report of April 10. Does that refresh your recollection?

A. Yes, except that the heading "Report of" and

(Testimony of Leonard Evans.)

so-and-so, is apparently identifying material added by someone else at a later date.

Q. Well, that isn't important.

A. That is my report.

Q. At that time, then, did Mr. Hawkins tell you that he would close the shop rather than——

Mr. Banfield: May it please the Court, we object.

Mr. Andersen: May I finish?

Q. At that time did Mr. Hawkins tell you he would close the plant rather than do business with the Longshoremen?

Mr. Banfield: We object.

The Court: It is a leading question unless the witness shows in some way that he has difficulty in remembering something.

Q. From that report, will you tell us the result of your interview—not the result, but the factual matter relating to your interview with Mr. Hawkins at that time?

Mr. Strayer: Your Honor please, if by that question counsel wants to show information in the memorandum, it relates to some matters not in the dispute.

Mr. Andersen: I will agree with that. It affects other Unions in there too, which apparently were discussed at [970] the time.

Q. But in relation to the Juneau Spruce Corporation here, from that report will you tell us what he stated in relation to the situation?

A. Well, the most important thing to me, of course——

(Testimony of Leonard Evans.)

Mr. Strayer: Just a moment. I object to that sort of an answer.

Q. You can't testify as to the most important thing to you. You testify just what was said.

A. All right. The thing first was this was a jurisdictional dispute. That was Mr. Hawkins' statement.

Q. Between whom?

A. Between the sawmill workers and the Longshoremen, and that he would not deal with the Longshoremen and that the comment had been made many times before in the plant and elsewhere that the Company would not deal with the Longshoremen and would close the plant down rather than deal with the Longshoremen. That was tied into Mr. Hawkins' statement that this was a jurisdictional dispute. I disagreed with him. He defined the jurisdictional dispute and this is part of our conversation—I think Mr. Banfield in part, previously, or in his office later—Mr. Banfield and me disagreed then and still disagree. Mr. Hawkins was using the same definition as Mr. Banfield. I was there as conciliator trying to reach any agreement. [971] The Department doesn't care who wins or loses. After their definition of jurisdictional dispute I saw it would be impossible to get the parties together.

Q. In the conversation did they define their idea of a jurisdictional dispute?

A. We each did. Jurisdictional dispute was defined in our conversation.

Q. Did Mr. Hawkins define his? A. Yes.

(Testimony of Leonard Evans.)

Q. What did he state?

A. That this was a jurisdictional dispute, defining it as one between a company and union over a division of work.

Q. Between the Company and a union?

A. Yes.

Q. In the conversation did you define a jurisdictional dispute?

A. I did, and I defined a jurisdictional dispute as a dispute between two unions over the division of work.

Q. With the employer being on the outside, so to speak?

A. With the employer not being directly involved in the controversy.

Q. Did you have any other—is that the gist of your conversation with Mr. Hawkins at that time?

A. It is the gist of the major part of it. I tried to get a meeting of the representatives of the sawmill, representatives [972] of the Company and representatives of the Longshoremen.

Q. Were you successful in getting Mr. Hawkins to agree to such a conference?

A. Either then or later I was successful in getting the three parties to meet for a very short time in the Commissioner of Labor's office.

Q. When was that?

A. If I remember right, it was a Friday afternoon.

Q. About when?

(Testimony of Leonard Evans.)

A. In the same week.

Q. Were your conciliations successful then or unsuccessful?

A. When we left I was hopeful. We had scheduled a second meeting for the following Monday. All three parties at that time indicated they would all show up. On Monday the Company representatives didn't show up. When I phoned to remind them they said "No soap—no meeting."

Q. That is, they refused to meet, did they?

A. Yes.

Q. Does this report also contain the gist of what you testified to, so far as the meeting of April 10 is concerned? A. Yes.

Mr. Andersen: I will offer it in evidence and we will delete the portions——

Mr. Strayer: I object. It is not in evidence. It is only a memorandum this witness made to refresh his memory, but it is not substantive evidence.

Mr. Andersen: Also, may it please the Court, it is an official record, a copy. They have the original in their files. It is a copy of an official record of the Territorial Department of Labor.

The Court: I think that the rule applied in a case of this kind, assuming it is admissible, being of an official character, it is not admissible except to rehabilitate or corroborate a witness who has been contradicted.

Mr. Andersen: May I offer it for identification then, your Honor?

(Testimony of Leonard Evans.)

The Court: Yes.

Mr. Andersen: For reference, more than for anything else.

Clerk of Court: The exhibit has been marked Defendant's Exhibit E for identification.

Mr. Andersen: You may cross-examine.

Cross-Examination

By Mr. Banfield:

Q. Mr. Evans, do you remember in talking to Mr. Hawkins and myself I made it perfectly clear to you that I didn't care whether you called this situation a jurisdictional dispute or not, but what it was was a dispute between [974] the Company and the I.W.A. —I mean between the Company and the I.L.W.U. Do you remember that?

A. I am sorry to say I don't, Mr. Banfield, but there may be a good reason for that. I was so disturbed by the difference of definition of jurisdictional dispute I might have missed the point of argument such as you make now.

Q. Do you remember saying that 8(b)4(D) of the Labor Relations Act only applied to a jurisdictional dispute between two labor organizations?

A. No, I have never—well, quoted the Labor Relations Act by number. I have never quoted a section of that Act by number. I have a good reason. I have never been an enforcement officer of that Act and I have never administered it, consequently I wouldn't try to quote it by number.

(Testimony of Leonard Evans.)

Q. Do you remember asking me for a copy of the charge filed with the National Labor Relations Board against the I.L.W.U., Local 16?

A. I remember.

Q. And it set forth a violation of a certain section of the Act?

A. The charge listed the facts and it listed the sections of the Act by number; yes.

Q. And you remember we discussed that particular section of [975] the Act which we claimed had been violated; do you remember that? A. Yes.

Q. And do you remember I stated this Act applied to an action by a labor organization to encourage or induce employees of an employer not to work, when done with the object of forcing the employer to assign the work to somebody else rather than the person to whom it is assigned; do you remember that?

A. I remember an argument along those lines. You see, my job was as conciliator, consequently I don't know. I am not informed and I don't pretend to be on the technical requirements of the Labor Relations Act. I could say yes and miss, because I am not familiar with it.

Q. Don't you remember you said there was just a dispute between two labor organizations contending for the same work?

A. I remember I felt that was the case, and I would make a statement along those lines, and I did.

Q. Do you remember that my position was I didn't care whether you called it a jurisdictional dis-

(Testimony of Leonard Evans.)

pute or what you called it, but it was a violation of the law as the law set it forth? You remember that, don't you?

A. I believe so.

Q. Do you keep up on these labor cases and labor opinions? [976]

A. Not under this law. I keep up to date on Wage and Hour and on certain other laws, but I do not try to keep up to date on this Labor Relations Act. I have no official connection with it.

Q. Have you read the decision of the National Labor Relations Board in this particular dispute?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

A. Is that——

Q. The decision which came out.

A. In this particular case—not in connection with this damage suit, but a question of whether or not——

Q. Yes.

A. I have read that, I believe, once.

Q. Do you remember what the opinion of the Board was?

Mr. Andersen: I object to that as incompetent, irrelevant, immaterial, may it please the Court.

The Court: Objection sustained.

Q. Has the Board adopted my viewpoint?

Mr. Andersen: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Q. Mr. Evans, hasn't the National Labor Rela-

(Testimony of Leonard Evans.)

tions Board, in that case, ruled that a jurisdictional dispute exists [977] when there is only an argument or a dispute between an employer and one labor organization?

Mr. Andersen: I am not going to object, but I assign the conduct as misconduct.

The Court: I think it is within the scope of the Court's previous ruling, and hence must be sustained.

Mr. Banfield: That is all.

Redirect Examination

By Mr. Andersen:

Q. Mr. Banfield mentioned and showed you a copy of the charge that had been filed by the Company against the Longshoremen's union. Did you also know what happened to that charge, which was discussed in your meeting with Mr. Banfield?

Mr. Banfield: I object, unless counsel wishes to open the door for the whole testimony.

The Court: Yes; objection sustained.

Mr. Andersen: May I state the reasons for it, your Honor?

The Court: Yes.

Mr. Andersen: On cross-examination they talked about a conversation that occurred there, just the conversation now. In the conversation that occurred there, Mr. Banfield apparently was talking and also asked him if in the conversation [978] he showed him a copy of the charge—I guess your Honor is probably right—wait just a minute while I read this. That is all, thank you.

Mr. Banfield: Thank you, Mr. Evans.

(Witness excused.)

Mr. Andersen: One other matter, may it please the Court. I realize your Honor previously made a ruling in relation to Exhibit C in evidence, that is, and with particular relation to Exhibit D for identification, and in relation to the testimony of Mr. Pearson. I understand your Honor has made that ruling, but as an officer of the Court, I always feel it my duty —I guess we can both recognize that occasionally even a Court can be brought back along the paths of righteousness, may it please the Court.

Mr. Strayer: If we are going to cite authorities, we also have some.

The Court: I am wondering if it isn't a situation in which the jury should be excused.

Mr. Andersen: I don't believe so.

The Court: Like an argument you might make in opposition to an objection?

Mr. Andersen: It will just take me a minute. I took the position yesterday and the jury was present, that contracts carried over from one employer to another. I, at that time, cited no authorities. At this time I cite National [979] Labor Relations Board vs. Hoppes Manufacturing Company, 170 Federal Reporter, 962-964—Federal Reporter Second—a very recent case under the Taft-Hartley Act. The Court said "The change of ownership in no way affects the obligation of the employer under the statute. It is the employing industry that is sought to be regulated

and brought within the corrective and remedial provisions of the Act in the interest of industrial peace' " and citing roughtly a dozen other cases, may it please the Court.

The Court: Do you contend that case is in point on the facts, or was it a dispute that had commenced under a previous ownership?

Mr. Andersen: In this case—yes, I contend it is very applicable.

The Court: In the case you cited, isn't that a case where a dispute arose under a previous ownership?

Mr. Roden: No, your Honor. The original owner of the plant had a contract with this Union. He sold out.

The Court: Was it a colorable sale or a bona fide sale?

Mr. Andersen: Bona fide, and it was stock in the corporation.

The Court: And did the purchaser assume the contractual obligation? Here there is positive evidence that the new owner—— [980]

Mr. Andersen: The new owner could not escape. The industry was regulated, not the parties.

The Court: Didn't the dispute involve industry, as distinguished from a plant like this?

Mr. Andersen: Not materially. I think the situation is exactly the same as here.

The Court: I don't mind looking at that case, but it is difficult for me to believe that in view of the testimony introduced on behalf of plaintiff, very positively to the effect that there was no intention

to assume and no assumption of a contractual obligation for the predecessor, that they could be bound nevertheless.

Mr. Roden: Your Honor, if a contract as a matter of fact exists between the Juneau Lumber Company and the Longshoremen, how could the Juneau Lumber Company cancel that contract or abrogate it without the consent of the Union without laying itself open to damages? A contract was in existence. If I make a contract with somebody and sell, and he says, "Never mind, Roden——"

The Court: Don't contracts end when one of the parties dies or sells out?

Mr. Roden: No, your Honor. There is cited in this very case where one of the parties died in this Pacific Second, or Federal Second; they tried to escape an order of the National Labor Relations Board. If it ran against the [981] partnership, or rather than the surviving partner, and it was no longer effective because my partner died, an operation of law became terminated. It was not your partnership being regulated, but your industry, both under the Wagner Act and the Taft-Hartley Act, and you could not escape a contract with a Union while a partner was alive.

The Court: It would seem to me that will involve argument at some length, because apparently your opponents don't agree with you.

Mr. Roden: I didn't agree myself.

The Court: What is the purpose of calling it to

the attention of the Court at this time—so that the matter may be set for argument?

Mr. Andersen: No, I don't intend to labor the point. I wanted to mention this case and the fact that it is the policy of the law as set forth in the Taft-Hartley Act to regulate industry or business engaged in interstate commerce. The policy of the law is to try and make certain there are no labor disputes. For instance, under the Act, as your Honor knows, if two labor unions are claiming jurisdiction——

Mr. Strayer: Pardon the interruption. If he is going to argue, I will ask for further argument.

Mr. Andersen: I was about finished.

The Court: If you were about finished—but it seems to me it should be made in the absence of the jury. [982]

Mr. Andersen: I can conclude in just a moment. In relation to the other aspects of the case, we contend in view of this authority and the Taft-Hartley Act, that any time a factual dispute is raised with respect to the issue, whether or not there is a contract, that is a matter for the jury to determine, rather than a law determination. Irrespective of the Taft-Hartley Act or Labor Management Relations Act, with particular reference to the public policy set forth in the latter Act, the purpose of the Act is to regulate, not any particular thing, but to regulate the industry. The Act isn't concerned with feelings of individuals.

The Court: I get your point.

Mr. Andersen: That is the point I wanted to make. I direct it to your Honor's attention.

The Court: My ruling yesterday on the other point that the facts show sufficient to warrant admission of the offered exhibit in the evidence is that there was not a sufficient foundation in the evidence for its production. I adhere to that ruling now. I do not think that the facts put in evidence on your behalf constitute a sufficient foundation to admit these offered exhibits in evidence, but as to the point raised now, I will have to reserve ruling until I can examine the authorities. As I understand it, so far as that particular point, its decision or ruling by the Court would not necessitate taking further testimony? [983]

Mr. Andersen: No, your Honor. Pardon me, that is not correct, as I look at it.

The Court: Why? Isn't it a pure question of law here?

Mr. Andersen: Yes, but if your Honor were to rule with us then, of course, there would be more evidence.

The Court: If it is a matter of law, why would there have to be more evidence, on what point?

Mr. Andersen: Maybe we are not talking——

The Court: I am talking about with relation to the authority.

Mr. Andersen: Exhibits C and D for identification, if the decision went in our favor——

The Court: I have already decided to adhere to my former ruling.

Mr. Andersen: Then, if you decide one I think you automatically decide the other.

The Court: No.

Mr. Andersen: Then if you decide one in our favor, I think more evidence would be necessary.

The Court? Why?

Mr. Andersen: Because the contracts would go in.

The Court: They are in.

Mr. Andersen: Then I want to interrogate witnesses regarding them, your Honor, if there is a question of law [984] pursuant to that.

The Court: If it is not necessary then we can postpone argument on that question until, say, one-thirty. If it is going to necessitate taking further evidence it seems to me the Court will be required to hear argument now in the absence of the jury.

Mr. Andersen: Whatever your Honor wishes.

The Court: It isn't what the Court wishes, it seems to me what the Court would be compelled to do.

Mr. Andersen: Precisely.

The Court: I assume counsel wish to argue the point in support of which this authority is cited?

Mr. Strayer: Yes, your Honor.

The Court: Are you ready to proceed?

Mr. Strayer: If I understand the point—I am not sure that I do. I would like to hear counsel on it.

The Court: The jury may be excused until called.

(Whereupon, the jury retired from the courtroom.)

Mr. Andersen: May I then briefly state my position?

The Court: Yes, on the second point.

Mr. Andersen: I understand, your Honor. Your Honor is only concerned at this point with the bare position of law with the carrying over of the contract. That is the question.

Mr. Strayer: That is the question that has been decided, your Honor. [985]

Mr. Andersen: No, the question the Court has not finally decided.

The Court: I have assumed heretofore there is no assumption of contractual relation and it is not binding on the plaintiff.

Mr. Andersen: Yes, your Honor. That is the point to which we address argument and that is the only point to which we address argument. In order to have a full understanding of that, may it please the Court, reference of course should be made to certain portions of the Taft-Hartley Act or Labor Management Relations Act, as it is referred to. I might add, in the case I cited, the Court indicated that under the old Act, that is, the Wagner Act or the present—this case being decided under the present Act, the Court held the rule of law to be the same. The public policy of the Taft-Hartley Act I have directed to your Honor's attention several times. It has provisions in it, for instance, that if two unions claim jurisdiction over a cer-

tain type of area of work the employer may immediately file a complaint with the Board and have an immediate certification, or rather investigation, by the Board Agent, and if the Agent makes a determination that there is a dispute between two unions, then the Board may immediately hold an election to determine who represents the workers. Not only the Act but the rules of the Board are so geared, may it please the Court, that [986] those matters can be handled with the greatest expedition to the end that there be no cessation in interstate commerce. That shows the extent to which public policy is involved in the Act. The Act has other provisions about conciliation and how parties must negotiate in good faith to the end that agreements are reached. All the way through public policy is set forth in the Act, allegedly in the relation of the public welfare, in relation to John Jones or the Spruce Corporation, or any other corporation or business, and theoretically, is it concerned with a union or person, whether that person be an individual, associate or cooperative, the Act theoretically has no interest in these things. It ill behooves a man to say "I want to hire John Jones in my lumber yards." They consider that immaterial under the law. So many man-hours go into the work and any able-bodied man can perform so much work. It is the general public policy with which we are involved, and it is so contrued, always along the lines not paying too much attention to the individual because it couldn't if it were to administer

an Act designed for general welfare. Individuals, unfortunately, fall along the line occasionally in our system, because it has long been said an individual must be subverted to the good of the whole sociological system, the good of the greatest number with which the Government is concerned. I think we can agree on that.

Many years ago under the Wagner Act there was, as I [987] recall, a shoe manufacturing company that crossed state lines, was in one state and had a contract with the Union and changed ownership, as I recall, and moved into another state, and the issue was whether the contract went with it. The Board held it did.

The Court: The contractual party was the same. One of the parties there was a party sought to be bound with the same party, was it not?

Mr. Andersen: The Board—as we look at it, the Union was the same, but the employer wasn't the same. They had completely changed their location, changed state lines.

The Court: I thought you said the employer moved?

Mr. Andersen: Over the state line, from one city to another.

The Court: Isn't he the same person?

Mr. Andersen: Certainly, but my recollection is he not only changed location but changed ownership. The other cases are all to the same point, and that is that the employing industry that is sought to be regulated is sought to be brought

within the remedial provisions of the Act. The change of ownership in no way affects the obligation of the employer under the statute. In other words, it is the policy of the Act, may it please the Court, as I see it. Here is a large corporation. The testimony is two million dollars or something like that. It employs a hundred, two [988] hundred or three hundred men; I think the figure was around two hundred and seventy-five men, if I recall, your Honor, from one of the witnesses' testimony that it was around two hundred and seventy-five men. They testified they wanted to cut fifty million feet of lumber. It seems to me a lot of lumber. Substantially, it is under interstate commerce, so here is an industry with which we are concerned and, not only this, but the whole lumber industry, so to speak. What, therefor, is the best interest of the public policy, the Board's position, the philosophy of the Board's position is this: here is a lumber company. We have to assume they operated efficiently, as matter of law. Whether they operated efficiently or inefficiently, so far as the rule of law is concerned, the mill operated with two hundred and seventy-five men working.

They talked about the Juneau Lumber having a contract with the I.W.A. They have a contract with other Unions, I assume, other Unions, ordinary workers and carpenters and so forth in the operations, and they have a contract with the I.L.W.U. The evidence is clear. They didn't even tell the I.L.W.U. they were cancelling any contract. All

they did was in a contract between themselves, that is, the two corporations, agreed they wouldn't carry over any contracts. That is all they agreed to. That could even be construed—but I don't make the point—it could mean a pecuniary or [989] monetary obligation. We don't necessarily make that point at this time, but whether this type of contract is that type of contract—if there is a distinction between contract and agreement, simply agreements relating to hours of work and rates of pay, that is all they ever had in them—it simply means under this collective bargaining idea that a pool of labor is made available to the employer from which he can draw as the business or industry desires. It is the public policy of the Act that that reservoir shall be created and maintained for the benefit of the industry.

That is the case. As I understand them to say it is against public policy to interrupt those relations, because the Board assumes—and there is no evidence here to the contrary—the Board here assumes those relationships are created by this agreement to which I refer for the interest and for the benefit not only for the particular industry involved, but for the public good or welfare as a whole. The evidence here in this case is absolutely void of any showing that the relationship between the Juneau Lumber or Juneau Spruce and Local 16 wasn't a profitable one for each but both of them.

Mr. Schmidt wasn't asked any questions on the

point, so it must be assumed all their relations were satisfactory. It is certain that for at least ten years the Juneau Lumber got all their longshore work from the Longshoremen. There is no question about that at all. Mr. Schmidt's testimony was [990] he carried on thereafter in the same way with the Longshoremen without telling them a word, hired them in the same way, paid in the same way, gave them a raise in the same way. It is not all a part of Mr. Schmidt's testimony, but it is the same thing. What is public policy on things like that? Does it mean every time there is a change of ownership or a partner dies that there is a sale of part or all? The employer stays the same; the only thing that happened, it was improved. The mill Manager remained the same person, the principal Manager, Mr. Schmidt, because Mr. Hawkins testified he was away at least half the time. The man who did the hiring remained the same, and supervised the work—he remained the same. I can't conceive a policy of the United States, as expressed in the Taft-Hartley Act, that under such circumstances a sale could be made by one corporation to another and thereby cut off contractual relations existing for ten years in the interest of industry and the country, without one bit of evidence between the employer and employee that they have not contributed to the interest of the United States, so when it came up in this particular case under substantially the same conditions, may it please the Court, the Court said, "It is the employing industry that is sought to be regulated

and brought within the corrective and remedial provisions of the Act, in the interest of industrial peace." "The change of ownership in no way affects the obligation of the employer" [991] and, of course, speaking of the new employer, "In no way affects the obligation of the employer under the statute." The facts were somewhat like this, may it please the Court—I will read the syllabus—it is something like this: there was a business and there was a complete change in the ownership of the business, complete new policy, complete new everything, and a new outfit came in and decided they weren't going to do business with the Union, they were going to close their plant. That is the language in the case. The National Labor Relations Board Examiner made a complete finding. They were going to close the plant before they would do business with the Union. They didn't even know that there was a contract with the Union, that the plant had made a contract. They weren't even aware of the fact that a contract had been made when they bought this business.

The Court said it didn't make any difference whether you knew or not, what we are interested in is freedom from industrial strife. You had your contract, had your agreement; therefore, it carries over until it is cancelled with the consent of the parties. That is, in effect, what the case holds, may it please the Court, so I respectfully submit to your Honor that is not only the clear statement of pub-

lic policy as set forth in the Act itself, and as I argued the other day on the motion to dismiss, I thought your Honor was at first impressed with my argument there, because I think [992] that argument, plus this argument, plus these cases, merely show what the policy of the United States is with relation to keeping industry in operation. The undisputed evidence is that after it was taken over it was carried on just as before, without any difference at all, and then the Longshoremen heard that they were loading sea-going barges, so they went down there to talk to them about it; in other words, it was a grievance, as the term is used in labor relations. They said, "We would like to talk to you about loading this lumber." Mr. Hawkins, who was in charge, according to all the evidence, said, "I refuse to negotiate. I will close the plant before I do business with the Longshoremen. I have nothing to talk to you about." All those phrases were used, as far as Mr. Hawkins is concerned; as a matter of fact—and again I am addresing myself to the same point—whereas, as a matter of fact, there was no reason under the Act why he didn't simply say to the Longshoremen, "O.K., I will sit down and negotiate the question with you." There was no reason why they couldn't come together and file a petition. Your Honor will recall there was no dispute at that time. The only dispute—possibly I am anticipating a point that has been mentioned here from time to time about interfering with the right of the Company to hire a man whom

he may want to hire—that is in issue here, that is completely foreign under the Act. Certainly under the Act the employer may hire men who don't belong to a Union. [993] Certainly that is true; there is no question about that. What this whole idea of an employer entering into a contract with a man for a dollar a day, common sense and legislation—certainly an employer has a right to hire, but we must make a distinction. The question here was whether the Longshoremen were pursuant to their contract, custom and practice, had a right to go in there and negotiate for this work, particularly when the I.W.A. said they didn't want it, so again we come up against this, flush with this, as I have said, if this case—and it has not been overruled—how can management say, "We bought this plant that the other one carried on for years. We didn't advise you the contract was terminated after May 1." They gave raises and carried on as before. Such is the evidence, and they then say finally they wouldn't even negotiate.

The law, as I see it in the light of public policy and light of these cases, is a matter of law. The contract carried over.

I will not argue the other matter the Court indicated he ruled on.

Mr. Roden: We probably have never sufficiently appreciated what the policy of the Taft-Hartley Act, or, for that matter, the Wagner Act, has been. I am frank to say I never did, until I ran across some of these cases.

The Court: Is this the latest case on that? [994]

Mr. Roden: Yes; November. I think November 28.

Mr. Andersen: The twenty-eighth of November last year.

Mr. Roden: Terminating a contract only if for value of services which could only be performed by the person whose death has occurred, if an ordinary contract for construction of building, no doubt his estate would be required to carry out the contract. As I said a moment ago, the Court holds —yes, your argument is right when this partner died, under the common law rule, that partnership was dissolved, but that is no longer applicable, since the Taft-Hartley Act, or the established public policy in which the public principally is interested and not the two parties concerned. That is what I believe.

The Court: You mean public interest overrides?

Mr. Roden: The private interest.

The Court: And also it would follow from your argument that it would override certain principles of law that were looked on as fairly well established.

Mr. Roden: I didn't hear the last, your Honor.

The Court: I say, it would also follow that the public interest would override certain principles of law that would appear to be somewhat well established before.

Mr. Andersen: Just that the Wagner Act made employers bargain, which absolutely conforms to the common law. [995]

The Court: But your argument now is a statutory provision instead of, you might say, the policy or something like the public interest implicit in the Act.

Mr. Andersen: We are arguing that the public interest is implicit in the Act.

The Court: But it is subject to statutory provision, and I don't think the comparison is very apt.

Mr. Andersen: I don't follow your Honor.

The Court: In one case, if there is a provision of the statute dealing with the point, you don't have to rely on implication from public policy or interest. You are in a better position, aren't you?

Mr. Andersen: Under the Taft-Hartley Act we have a statute which itself appraises public policy of the United States in relation to all things that are brought within its purview.

The Court: I understand.

Mr. Andersen: The Act says—it repealed the Clayton Act——

The Court: I understand all that, but you can't point to a specific provision repealing some law providing that a contractual relation shall not be forced on him. There is a difference. In one case we might rely on specific statutory provisions, and in the other case we don't have it. Have you anything? [996]

Mr. Banfield: We would like to point out that counsel avoided telling how the transfer took place, or if it was the same organization. I think the Court would like to see it, and we would.

The Court: How is the Court going to see it if you also want to see it?

Mr. Roden: The case is short.

The Court: Do I interpret the remarks of counsel now as desiring a recess?

Mr. Banfield: Yes.

Mr. Strayer: We just want time to look at it.

The Court: How much of a recess?

Mr. Banfield: We can read it out loud.

The Court: How much recess do you wish?

Mr. Banfield: We don't care for any. We can read the case.

Mr. Roden: I think we should refer to the authority to get the idea.

The Court: If you have to look at other authority, probably you will need a recess.

Mr. Banfield: If it is not in point, "In this case the National Labor Relations Board asks for enforcement of its order finding respondent had restrained and coerced its employees in violation of Section 7 of the National Labor Relations Act, and had refused to bargain collectively as required by [997] Section 8(5) of the same statute, 29 U.S. Code, Section 157 and 158.

"The case presents primarily a question of fact. It arises out of the following circumstances, which for the most part are not controverted.

"The controlling interest in respondent"—that is the Hoppes Manufacturing Company—"Was owned by John W. Hoppes, who prior to his death in 1945 was heavily indebted to a local bank. In order partly

to protect the bank's loan, H. E. Freeman, president of the bank, and B. A. Mayer, president of the Bundy Incubator Company, and also director of the bank, on August 27, 1945, purchased the entire block of Hoppes's stock." I imagine Hoppes Manufacturing Company is a corporation. I haven't found where it says so. "Mayer's principal interest in the matter was to acquire the plant building as a storehouse for the Bundy Incubator Company. Freeman and Mayer intended at first to close the business, but later, at the intercession of Forrest R. White, general manager of the respondent, they decided to operate it experimentally for about a year. The business had never paid dividends; it had broken even since 1941.

"The plant, which makes feed water heaters, at the time employed eleven men. Shortly before Freeman and Mayer purchased the stock, a consent election had been held at which the U.A.W.—C.I.O. had been chosen as bargaining representative, [998] but Freeman and Mayer were not aware of this circumstance until about a week after they started to operate the business.

"The new set-up was not particularly well organized. Freeman had nothing to do with the management, which he left to Mayer and White. He said frankly to one of the United States conciliators that he was 'thoroughly indifferent to the operation of the plant' other than his natural reluctance to drop some men where they had worked for many years."

If the Court please, I don't believe I need go on. It simply shows the corporation owned the plant and

some bank directors decided to buy some stock and the entity went right on. Isn't that the case?

Mr. Andersen: Your treatment of it isn't novel. I suggest you read it all.

Mr. Banfield: All right. "Mayer was absent during some four weeks of the critical phase of the controversy. He had rented a quarter of the plant building for warehouse space and thus had attained his main purpose in buying a share in the business. While Mayer primarily represented the owners in the management, he gave no instructions to White as to how to deal with the union and, due to his absence from the city, he at no time met with the United States conciliator.

"The Board found that shortly after Freeman and Mayer took over the business, statements were made by both the superintendent and the manager to the effect that the plant would [999] be closed if the union came in. This finding is conclusively supported by the record. The factory superintendent told two of the men that there had been a change of ownership and that 'as far as the Union was concerned, it wouldn't tolerate it. . . .' He further said that if the employees would not give up the union he would have to close the plant.

"Richardson, an employee, testified that White, the manager, told the men in a general meeting that 'the place had changed hands, and that he thought that Mr. Mayer would be a man that would be glad to meet us all squarely, and told us at that time he didn't think that the Union would be a necessary thing for

the employees there at the plant, and he did say, too, that Mr. Mayer would not have the Union in the plant.' In answer to a question as to what would happen if the employees persisted in their desire to have a union, White said the company 'would have to close it down'."

First point of law, "The respondent does not seriously controvert these statements, but points out that the company had never operated at a profit, contends that it was the right of Mayer and Freeman to discontinue operations at any time, and that the declaration that the plant would be closed therefore did not constitute an unfair labor practice. But the statements quoted were more than a mere notice of discontinuance due to financial failure. They constituted a threat to discontinue unless the union was dispensed with, [1000] and this was clearly coercive under the statute." In other words, an interference with a man's right to join or not join a union.

Second point of law, "While Freeman and Mayer were confronted with an unexpected situation and they personally did not oppose the union, they authorized White to represent them in the negotiations with the union, and they are bound by his acts. The change of ownership in no way affects the obligation of the employer under the statute. 'It is the employing industry that is sought to be regulated and brought within the corrective and remedial provisions of the Act in the interest of industrial peace.'" Then there are some cases cited.

Third point of law, "As to the refusal to bargain,

a similar conclusion is required. At the one meeting between the union representatives and White on June 7, 1946, White listened in silence to the reading of the proposed contract which had already been delivered to him, until the section dealing with wages was reached. He then declared in effect that no increase in wages was possible and that if that was the principal issue, the negotiations might as well close."

The Court: I don't think those matters you are now reading are of any materiality here. I think the question is whether there was a change of ownership or merely a change of ownership of stock. What about those other cases cited, have [1001] counsel examined them?

Mr. Andersen: Your Honor, this case doesn't treat change of stock at all. The case talks about change of ownership.

The Court: But what it was was the ownership of stock, wasn't it? It would be merely dictum.

Mr. Andersen: Your Honor, maybe it is dictum.

The Court: That is the use of the words "change of ownership" where you are dealing with nothing but ownership of stock.

Mr. Andersen: It would have been idle for this if the Court was only concerned with the change of stock in a corporation, then the Court would have said that the employer remains the same. The fact that stock might remain the same—I am sure your Honor will agree with that. Instead of that, the Court cites all the cases and says it is not concerned with the change of ownerships, simply the industry.

The Court: Courts have always made general statements, not full import, without regard to the facts. The facts in this case show a change of ownership.

Mr. Andersen: It doesn't have four white paws and a star in the middle of its forehead. I have never been able to find that sort of case.

Mr. Roden: First of all, may it please the Court, the change of ownership shown in this case, if there was [1002] ninety nine per cent of the stock sold, what difference does it make whether there is a deed to the property or whether he assigns stock to them. This little fiction that a corporation is one entity and the man who holds all the stock in it is another entity is of very little importance at any time. The question is, what is the actual situation? If I hold the stock in the corporation I am the owner of assets.

The Court: But here it was a new organization. It wasn't the old one. It was a new one. It was not merely a sale of stock.

Mr. Roden: All right. The quotation here is that a transfer of ownership is of no consequence. It is a liberal interpretation of a former decision in the previous authorities here.

The Court: Have you examined the other authorities?

Mr. Roden: I have. 87 Federal Second.

Mr. Strayer: Which case is that?

Mr. Roden: 87 Federal Second, I think is here used for the first time.

The Court: But was there a complete change of

ownership, or merely a change of ownership of stock?

Mr. Roden: I cannot answer that question correctly, your Honor.

The Court: It still looks like we will have to take a recess to examine these authorities, because counsel disagree [1003] to their effect.

Mr. Roden: I think this is significant at the end, "Whether the case be considered as governed by the original National Labor Relations Act of 1935, or by the Labor Management Relations Act, enacted June 23, 1947, the conclusion is the same. Under either statute there is ample support for the findings of the Board." It all comes back to the Wagner Act and the Taft-Hartley Act here in the interest of the public and not to create, so to speak, any rights in an employer or in an employee which are superior to the rights of the public.

Mr. Andersen: We have one other matter. Advance Sheets 172 Federal Second, it would be the same volume.

The Court: You say 170?

Mr. Andersen: 172, your Honor. In this case there was a corporation——

Mr. Strayer: Might I have the page number?

Mr. Andersen: 459. In this case there was a corporation. The men split up, and one formed a partnership with his wife, left the corporation and formed a new entity.

The Court: He just took on a different name.

Mr. Paul: He went into——

Mr. Andersen: He left the corporation and

formed a partnership with his wife. The labor contracts had been in existence. This doesn't have four white legs with a star on [1004] its forehead, but subsequently unfair labor practices arose.

The Court: Did he leave the plant, or just the corporation?

Mr. Andersen: He left the plant and the corporation.

The Court: And set up his own plant?

Mr. Andersen: He apparently bought, as a partner—he split away from the corporation, this corporation had several plants. He left the corporation completely—he and his wife bought one of the plants and he operated separately and apart from the corporation with his wife. Those are the facts.

The Court: Was it found to be a subterfuge?

Mr. Andersen: No, your Honor, there was no question about that. The way the question came up, there was nothing in here at all about subterfuge. I am willing to argue the point if it will do me any good.

The Court: I haven't indicated you shouldn't argue. I am giving you an opportunity to argue.

Mr. Andersen: Labor disputes arose apparently with respect to both. The partnership said it had nothing to do with the corporation. Charges were filed against the corporation of unfair labor practice, and also arose with respect to this new partnership, and the objection came before the Board on the consolidation of them both for hearing, and that is the question that came up before the Court on enforce-

ment [1005] and the Court just disposes of the question just formally.

The Court: What did it hold?

Mr. Andersen: It joined both despite their entities and here——

The Court: If it joined both it must be on some ground. What was the ground?

Mr. Andersen: I will read the syllabus. "Proceedings on charges of unfair labor practices against corporation and against partnership which was alleged to be partial successor to corporation were properly consolidated before Trial Examiner of National Labor Relations Board." That is the only important aspect of it. It bought the plant. It was a partial successor. It bought one of the plants and the partnership carried on the same type of business. It bought from the corporation. It was a partial successor; nevertheless, it is bound by the same contract.

That again shows the public policy with which we are here concerned. I again tell your Honor I don't know of a case off hand that is four square. This again sets forth the public policy. Here is a clothing manufacturing business, a corporation. One man pulls out from the management of the corporation—he may have remained one of the stockholders, but that is immaterial, according to Mr. Banfield—he pulls out and forms a partnership with his wife in the same business, and is held by a contract of the former corporation. Public [1006] policy which says two people engaged in interstate commerce who have to continue peaceful labor relations can't get out by

selling to another corporation, or, like your Honor said, by subterfuge, but there is none here.

The Court: Except one of the former owners continued under the old name. Here Mr. Rutherford——

Mr. Andersen: Mr. Schmidt continued. He was the same man.

The Court: One particular corporation, particularly a large one, if it changes hands and undergoes a change, someone always remains, but that doesn't give it the character of being the same. We will take a recess for fifteen minutes to allow counsel to examine the authorities.

Whereupon Court recessed for fifteen minutes, reconvening as per recess with all parties present as heretofore and eleven of the twelve jurors all present in the box; whereupon the trial proceeded as follows:

Clerk of Court: The jury is present, with the exception of one.

The Court: Have the defendants any other witnesses to put on?

Mr. Andersen: Not this morning.

The Court: Any time?

Mr. Andersen: We are awaiting your Honor's ruling.

The Court: Ladies and gentlemen of the jury, you [1007] are excused until two o'clock.

Mr. Banfield: We have one rebuttal witness out of order that would take about five minutes.

Mr. Andersen: One of the jurors is missing. I understand the juror—I heard someone mention the juror was under the impression he was excused and went home.

Whereupon the absent juror entered the jury box.

The Court: Mr. McKenzie, no juror can afford to pay a fine out of his pay as a juror. You should not be late if you can help it. I was going to excuse the jury because I thought you wanted to be heard.

Mr. Andersen: Mr. Banfield said he had a witness out of order.

Mr. Banfield: It would only take about five minutes. The witness would like to leave this afternoon.

The Court: Very well.

EUGENE S. HAWKINS

called as a rebuttal witness on behalf of the plaintiff, having previously been duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. Mr. Hawkins, how many meetings have you had with Mr. Peterson?

A. Just one, I believe.

Q. When was that meeting? [1008]

A. April 9.

Q. Are you sure it was the day before the picket line was established? A. Yes.

Q. Was there a meeting on the evening of the seventh of April or eighth of April which Mr. Peterson and certain members of the I.W.A. and I.L.W.U. were present? A. No.

Q. Did you ever have any meetings in the evening about eight o'clock, or at any time after six o'clock with the members or committee of the

(Testimony of Eugene S. Hawkins.)

I.W.A. and committee of the I.L.W.U.?

A. No; not both together.

Q. Now what evening meetings did you have?

A. I had one evening meeting with the I.W.A. in October, 1947.

Q. In October, 1947? Was Mr. Peterson there?

A. Yes.

Q. And now, at that meeting was there anything said about you knowing the answers, some such phrase as that? Do you remember some such thing being said?

Mr. Andersen: What meeting are you talking about?

Q. The meeting in October, 1947.

A. Yes. As that meeting broke up the statement was made by Mr. Card in reply to a statement made by Mr. Peterson, I believe, that Mr. Card stated he also knew some of the [1009] answers to labor problems.

Q. Mr. Hawkins, let me refresh your memory. In October, 1947, Mr. Card arrived here and you had two meetings that day, did you not?

A. Yes.

Q. When was the first meeting?

A. About two in the afternoon.

Q. And who was there?

A. The representatives of the I.L.W.U.

Q. Was the I.W.A. there?

A. Not in the afternoon.

Q. Was that the time that the I.L.W.U. asked Mr. Card for a contract?

A. Yes.

(Testimony of Eugene S. Hawkins.)

Q. And was there anything said at that meeting of the afternoon of October 29 by any of these Longshoremen regarding "We know the answers." Did anyone make that statement?

A. That statement was made several times, and it is confusing to remember just——

Q. But who made the statement?

A. Mr. Card made the statement, that is.——

Q. How did he happen to make this statement?

A. Upon leaving—I just can't quote the words they did say.

Q. Was there any such a meeting on October 7 or 8?

Mr. Andersen: You are talking about October 7 and 8? [1010]

Q. Yes. With Mr. Peterson? A. No.

Q. How many meetings were there between April 1 and the time the picket line went on, with I.W.A. representatives?

A. I believe just one.

Q. And that was on what date?

A. The ninth.

Q. Was the I.L.W.U. present? A. Yes.

Q. Was there anything said at that time regarding anyone knowing what all the answers were?

A. No. There wasn't much discussion there, just a few words.

Q. Was there anything said at that time about closing down the mill?

A. On their part, they were to put the picket

(Testimony of Eugene S. Hawkins.)

line up and the I.W.A. was not going through it, but we had no intention of closing the mill, other than being forced to.

Mr. Banfield: That is all.

Cross-Examination

By Mr. Andersen:

Q. Just a few questions. You say the meeting was on April 9 instead of April 7? You did have a meeting at which Mr. Peterson was present, didn't you, in the first part of April? [1011]

A. I don't recall no meeting the first part of April.

Q. I beg your pardon?

A. I don't recall one on the first.

Q. Both the seventh and the ninth are in the first part of April?

A. I meant prior to the ninth of April.

Q. Do you recall a meeting on the seventh?

A. No.

Q. The meeting you referred to is a meeting before the picket line went up, is that correct?

A. Yes.

Q. Is that the meeting where some Longshoremen were present; that is, a committee of Local 16 and a committee from I.W.A. came and said that I.W.A. had passed a resolution for the Longshoremen to do the work and they wanted you to turn the work over to the Longshoremen? Was that the meeting?

(Testimony of Eugene S. Hawkins.)

A. As I recall, that wasn't the wording of what transpired.

Q. But substantially—I don't want to hold you down to the exact words? A. Yes.

Q. That was substantially what was said?

A. Yes.

Q. The Longshoremen said in this meeting, said that they had done the work for the Juneau Lumber Mill, that they had a [1012] contract with the Juneau Lumber Mill, and wanted to negotiate with you now for this new work that you were doing about these barges? Was it substantially that?

A. I don't know. At that meeting there was very little said, and they made the statement if I didn't agree after this to negotiate that the next day there would be a picket line put up.

Q. They wanted you to negotiate and you wouldn't negotiate? They said if you didn't negotiate they would put up a picket line?

A. Yes.

Q. And you said you wouldn't negotiate?

A. Yes.

Q. Wasn't there something said at that meeting that they had done all the longshoring for Juneau Lumber and were also hired by Juneau Spruce to do longshoring work, wasn't there something like that said, too?

The Court: This seems to be going into the whole thing.

Mr. Andersen: Counsel went into this conversation, I am going into conversation.

(Testimony of Eugene S. Hawkins.)

The Court: But only for the purpose of attempted refutation of some statement by one of your witnesses or attributed to this witness by one of your witnesses.

Mr. Andersen: There is no objection. [1013]

The Court: No, but the Court has got to try to expedite the trial, too. It looks now like we might not finish this week. I rule it is improper cross-examination to go into anything not gone into on direct examination.

Mr. Andersen: That cuts me off, your Honor.

The Court: If that is the effect—it is intended to preclude you from going into something gone into by this witness the first time he was on the stand.

Mr. Andersen: That is all.

Mr. Banfield: That is all.

(Witness excused.)

The Court: Ladies and gentlemen of the jury, you may now be excused until two o'clock.

(Whereupon the jury retired from the courtroom.)

Mr. Banfield: May it please the Court, I have examined some of the cases cited by counsel and which are cited in Volume 170 and Mr. Strayer has also examined some. One of the cases referred to there is a case of National Labor Relations Board vs. Blair Quarries, Inc. That is where a company called "Granite" operated to 1944 when it leased

it to Blair. The Court, in discussing the issues, stated that there had been unfair labor practices which had been committed by Granite, the first operator, and that the superintendent of the Blair had performed certain unfair labor practices while being employed by Granite and that those practices continued after [1014] Blair took over and were committed by Blair while the superintendent was in Blair's employment. The Court says you can best understand the nature of the unfair labor practice through threatening and coercing the employees by understanding the whole practice. Granite, in fact, pleaded guilty, paid back pay and made certain amends which resulted in the Board discharging the charge against Granite, but Blair committed the same acts and was employing the same people.

The Court: There was no change of ownership?

Mr. Banfield: There was a lease by Granite to Blair. There was a new operator, but Blair is not charged as a result of any contract. It deals entirely with unfair labor practices threatening employees and no contracts, and it is only consolidated for hearing. One charge was dismissed. There was a charged against the subsequent owner after the lease was put in effect.

The other case is National Labor Relations Board vs. Baldwin Locomotive Works. In that case Baldwin Locomotive Works was under a debt to the Federal Government which put it in bankruptcy because it didn't pay an R.F.C. loan, but permitted

Baldwin Locomotive Works, as debtor in possession, to continue to operate these properties for the account of the bankrupt estate, then as they were discharged from bankruptcy, Baldwin Locomotive Works continued on in the possession of the property as the sole owner, and the Government had no further [1015] interest in the matter. There had been unfair labor practices committed by Baldwin Locomotive Works during the bankruptcy and continued on into the period that Baldwin Locomotive Works owned it. The Court said that Baldwin Locomotive Works was the operator of the property at all times and that Baldwin Locomotive Works was liable for its unfair labor practices to begin with and afterwards. It was the same, identical person who committed the acts. It says the fact that the United States had an interest in it under the bankruptcy law didn't make the operator come under that.

Mr. Strayer: Where there has been any holding, your Honor, that my ability can be vested upon a successor, it has been based either on subterfuge to avoid a Court order or common identity, passing from first to second or something of that kind. That is true. The case in 170 Federal is obviously of that type, because there was a passage of stock from the corporation and the corporation as an entity carried right on into the second operation. In the Adel Clay Products Company cited in the 170 Federal Second case, the original stockholders who had bargaining contracts when they dissolved,

broke up the corporation and formed a partnership—each of them were in that and were precisely the same and in the same proportion as in the former corporation. You can trace the identity. The Baldwin Locomotive Works was on a void Court order, 172 Federal Second is actually an authority for us instead of counsel. It is a case where originally it was a corporation and the president withdrew and sold his stock and formed a partnership with his wife in a business. The charge by the Board was against the corporation and partnership on the theory there was a continuing relationship. Of the operation, the Trial Examiner found no continuing relationship. It was contended it was error to join them in the same proceeding before the Board. That is a procedural matter and all the Court said was it was not proper. If there had been a continuing relationship there, it would have been entirely proper to hold them in the same proceeding. I think it is most significant and persuasive. All cases counsel cited are cases in which Federal Courts have sustained the continuing relationhip or common identity and the most recent is the National Labor Relations Board charges presumed to be rendered in this very dispute here. That was considered by the Board here and virtually the same facts were offered in evidence in this case.

The National Labor Relations Board held, as your Honor undoubtedly knows, that there was no obligation binding on the Juneau Spruce Corporation.

The Court: I haven't had a chance to read that yet.

Mr. Strayer: The pertinent part is on page 8.

The Court: Was the same point made there?

Mr. Strayer: The same point was made there. "It is [1017] well established that the purchaser of physical assets of a business may not be held to have assumed existing contract obligations to a Union in the absence of a showing of acceptance of such liability. Moreover, there is no contention that the contract for the disposition of the physical assets of the Juneau Lumber Mills, Inc., was not bona fide, or that there was any common identity between the purchaser and the seller. We find, therefore, that the Company did not assume the agreements to which Juneau Lumber Mills., Inc., was a party signatory, nor the contractual relations thereunder."

Mr. Andersen: I would like to mention that involved in the case, of course, obviously there is a change of custodian by the usual trustee in bankruptcy and supplementing the ownership of the corporation.

The Court: What case are you speaking of?

Mr. Andersen: The one Mr. Banfield referred to, your Honor, the Locomotive case.

The Court: The Court adheres to its prior ruling.

(Whereupon Court was recessed until two o'clock p.m. May 11, 1949, reconvening as per adjournment with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:)

Mr. Andersen: The defense rests, your Honor.

The Court: Do you have any rebuttal?

Mr. Banfield: One rebuttal witness. [1018]

PLAINTIFF'S REBUTTAL

ROBERT M. DRUXMAN

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Banfield:

Q. Will you state your name, please?

A. Robert M. Druxman.

Q. Where do you live, Mr. Druxman?

A. Juneau.

Q. What was your occupation in 1948?

A. Newspaper reporter for the "Alaska Daily Empire."

Q. Did you have any interviews with Mr. Verne Albright during 1948?

A. On several occasions.

Q. At his or your request.

A. Usually at my request, though on a couple of occasions he did say he had something he thought might be of interest to me.

Q. Did Mr. Albright ever give you anything of particular interest to you?

A. Yes. On either July 5 or 6, 1948, he gave me a copy of a resolution passed by the Juneau C.I.O. Union Council.

(Testimony of Robert M. Druxman.)

Q. Did he make any request at that time, or did you?

A. Well, it is customary when a reporter receives something like that to be used as material in a newspaper story, and [1019] I asked him if he had any objection to my publishing it—he said "No." He handed it to me and said I could keep it.

Q. Did he hand it to you or did you ask for it?

A. I believe that——

Q. Unless you are quite certain, you don't need to answer.

A. On two occasions I was in his hotel room, one of them I met him on the street and the other time he phoned me up and asked me to come down there. I am not sure which it was, but the result was this resolution had been passed and he suggested I would be interested in seeing it.

Q. He suggested you would be interested in seeing it? A. That is right.

Q. And afterwards handed it to you?

A. That is right.

Q. I will hand you Exhibit 23 and ask you if that is the document he gave you at that time?

A. Yes, that is the document.

Q. Did he know you were going to publish it in the newspaper? A. Yes.

Mr. Andersen: I object to that as a conclusion of the witness.

The Court: If he knows——

A. Yes.

(Testimony of Robert M. Druxman.)

Q. And did you write an article about it? [1020]

A. Yes.

Cross-Examination

By Mr. Andersen:

Q. What was the date?

A. The article was published?

Q. Yes. A. July 6, 1948.

Q. As a newspaper reporter you are always seeking items of general interest to the public?

A. Yes.

Q. You heard about this resolution being passed from some source?

A. From Mr. Albright.

Q. It was of general interest and you wanted to publish it in your paper. He had one and you published it in your paper?

A. That is it, more or less.

Mr. Andersen: That is all. Thank you.

Mr. Banfield: We rest, your Honor.

(Witness excused.)

The Court: You may proceed with the opening argument.

Mr. Strayer: Your Honor, we will have some requested instructions to tender, and also we have a motion to make at [1021] this time.

The Court: In the absence of the jury, you mean?

Mr. Strayer: Yes, your Honor.

The Court: The jury may retire until called.

(Whereupon the jury retired from the courtroom.)

Mr. Strayer: It just occurred to me I might be premature in saying in the absence of the jury, a motion for a directed verdict in favor of the plaintiff in this case. Is that the practice, to do it in the absence or presence of the jury?

The Court: In the absence of the jury.

Mr. Strayer: Plaintiff moves the Court to direct the jury to return a verdict for plaintiff and against defendant in such amount of damages sustained by plaintiff as the result of the strike at the plant. I may say to the Court, Mr. Banfield and I are uncertain under Alaska procedure whether it is necessary to make this point in order to save a legal point we wish to save. The fact that uncontradicted the evidence has proven we are entitled to damages, the only uncertainty is the amount of damages, and that is the purpose of our motion at this time.

The Court: Do you wish to say anything?

Mr. Andersen: We think the record speaks for itself, your Honor.

Mr. Strayer: May I add one thing? We are specifically [1022] moving for a directed verdict as to each of the defendants.

The Court: Well, I think there are certain questions of facts, such as, for instance, the scope of the officers or agents, the scope of their employment, which must go to the jury. Call the jury.

Mr. Strayer: Is an exception necessary?

Mr. Banfield: The statute states yes. Under our

present rules I think that has been dispensed with.

The Court: I think on a decision of the Court on any matter of law, it is unnecessary to take an exception, but of course they often do.

Mr. Andersen: We proceeded on the same assumption, that it was not necessary.

(Whereupon the jury returned and all took their places in the jury box.)

The Court: You may proceed.

(Whereupon, Norman Banfield, of attorneys for plaintiff, made the opening argument to the jury in behalf of the plaintiff and thereafter, George R. Andersen, of attorneys for defendants, made the opening argument to the jury in behalf of the defendants.)

(Thereupon, the jury was duly admonished and Court adjourned until ten o'clock a.m., May 12, 1949, reconvening as per adjournment, with all parties present as heretofore [1023] and the jury all present in the box.)

(Whereupon, Henry Roden, of attorneys for defendants, made the closing argument to the jury in behalf of the defendants; and thereafter, Manley B. Strayer, of attorneys for plaintiff, commenced the closing argument to the jury in behalf of the plaintiff.)

(Thereupon, the jury was duly admonished and Court recessed until two o'clock p.m., May 12, 1949, reconvening as per recess, with all

parties present as heretofore and the jury all present in the box; whereupon Manley B. Strayer, of attorneys for plaintiff, concluded the closing argument to the jury in behalf of the plantiff.)

(Thereupon, Court recessed for ten minutes, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; whereupon respective counsel were furnishd copies of the Court's Instructions to the Jury, and the Court read his Instructions to the Jury.)

The Court: Ladies and gentlemen of the jury, you may now retire until called.

(Whereupon, the Jury retired from the courtroom.)

The Court: Do counsel wish to take exception? They may do so now.

Mr. Andersen: I think the record should show that counsel stipulated.

The Court: The record may show, if it doesn't already, [1024] that the jury is absent.

Mr. Andersen: And may it be stipulated that the exceptions may be made in the jury's absence?

Mr. Strayer: Yes.

Mr. Banfield: I am not sure now that in taking exceptions the reason must be stated.

The Court: Yes, you must state the reason.

Mr. Banfield: We wish to except to the Court's refusal to give plaintiff's instruction 3A, requested

by instruction 3A by the plaintiff, because we feel it would be prejudicial to plaintiff's case to not have that fact known to the jury.

The Court: I don't think it is the jury's concern. It is like punishment in a criminal case.

Mr. Banfield: And if the Court please, the definitions in plaintiff's requested instructions 4 and 5, and Court didn't give instruction 4.

The Court: That is not necessary. That is undisputed.

Mr. Banfield: We wish to except to the failure of the Court to give plaintiff's requested instruction No. 9, for the reason that we believe the jury should know what "ratification" means in order to fully determine the issues in this case.

The Court: But there is no evidence upon which an [1025] instruction of that kind could be predicated, and it would be an abstract instruction, as I see it. There was no evidence.

Mr. Strayer: I think there was circumstantial evidence of ratification. The newspaper article is the evidence that the International, for example, ratified the activities of Local 16 up here, or rather ratified the activities of Mr. Albright up here and, of course, with regard to the Local, if your Honor please, the fact that the picket line was maintained was ratification of the activities of the Local in making demand for the work.

The Court: So far as the article to which you refer, I doubt if that would sufficiently be ratification, but so far as the picket line is concerned,

ratification could perhaps be implied from that, but it is so notorious, it seems to me.

Mr. Andersen: I think the term "ratification" could only apply to the Local. So far as the International was concerned, the testimony was that the Local put them there.

Mr. Strayer: I think your Honor is correct on that.

Mr. Banfield: Plaintiff wishes to take exception to the Court's failure to give plaintiff's requested instruction No. 12, because particularly it contains the element of what constitutes a breach of duty, and the factor of attaching responsibility, regardless of whether he has knowledge of the act or not.

The Court: That is covered, and, of course——

Mr. Banfield: I haven't been able to find it.

The Court: And the Court should avoid repetition or emphasis on any point.

Mr. Strayer: Which instruction is that included in, your Honor?

The Court: It is the latter half of Instruction No. 6 that covers it.

Mr. Banfield: On page 9 or 10, your Honor?

The Court: Nine, the latter half.

Mr. Strayer: I think your Honor's Instruction No. 6 is predicated on theory that two parties have knowingly entered into a conspiracy to commit an unlawful act. What we wanted to raise in the requested instruction was that if the participant International entered into an agreement to commit a particular act to bring about a particular result,

and even though he did not know that the result is an unlawful one, nevertheless if there was any active participation by himself, then he is liable. It seems to us that is not covered by No. 6.

The Court: Well, do you think the evidence—that there is any basis in the evidence, or something like that?

Mr. Strayer: Of course, the International has taken the position all the way through that it had nothing to do with the strike, and did not have knowledge of the Local's doing or what was going on up here. It seems to me the newspaper [1027] article is some evidence that the International did know what was going on and steps were taken, although they might have thought that the strike was legal. Mr. Banfield points out that the same thing would apply to both the International and the Local, the fact they thought the strike was legal, even though they did something in active participation.

The Court: The whole tenor of the instructions is that the acts were not legal, so I don't see how it could become the instructions, assuming that the acts charged were illegal, and the further degree of participation by one of what he does is immaterial, so long as he does something. In other words, the old axiom that ignorance of the law is no excuse would apply.

Mr. Banfield: If the Court please, the plaintiff excepts to the failure of the Court to give the plaintiff's requested instruction No. 13, for the reason that

the defendant Local set up an affirmative defense which it has wholly failed to establish.

The Court: The Court has instructed that the whole defense was based or rested on their Exhibit C, which is out of the case, and the Court so instructs.

Mr. Banfield: I didn't have an opportunity to look these over in advance. I was unable to see that. It may be, if the Court is satisfied——

The Court: It is Instruction No. 11. [1028]

Mr. Strayer: No. 11 refers to the decision, your Honor.

The Court: And Exhibit C.

Mr. Strayer: All it does, your Honor, is instruct that Exhibit C was introduced for a limited purpose and it is not binding on the plaintiff. There is still no instruction that would prove affirmative defense.

The Court: It is taken out of the summary of the pleadings. I removed it.

Mr. Strayer: Is it the practice here, does your Honor send the pleadings to the jury?

The Court: Not in this case. The last instruction is to that effect, and only the instructions and the exhibits go in.

Mr. Strayer: I see.

Mr. Banfield: Now, the Court please, I think we will take exception to the failure of the Court to give plaintiff's requested instruction No. 16, which we think is very necessary in this case because of the amount of testimony which there has been and argument here with respect to the failure of the plaintiff to bargain collectively with Local 16, and under the

law it was under no obligation to do so whatsoever, and we think the Court should instruct the jury accordingly.

The Court: That is not an issue in this case and the Court shouldn't instruct on anything but what is in issue. [1029] We could get a lot of collateral issues that way.

Mr. Strayer: I am unfamiliar with the practice here. The practice I am used to is where there is failure to prove any element in the case or that came in which wasn't established or was argued to the jury, has no bearing. The custom is that those matters should not be considered. Now, it may be that that has been taken care of by limiting the instructions to the specific things mentioned, but as I say, I am a little unfamiliar with the practice and it is a little hard for me to reconcile. Your Honor feels by limiting the instructions to the issues you have thereby removed from the jury——

The Court: The instruction was No. 4.

Mr. Strayer: Then may we have an exception to the instruction No. 4, which was given for the reason that it is submitted as an issue of fact to the jury, whether or not it was established that the acts complained of were admitted by the various individuals as within their scope and employment. It is our feeling the evidence is undisputed and those facts were within the scope of the jury and should not have been established as an issue for the jury. That same remark would apply to Instruction No. 5, since it is made a question of fact whether acts performed were within the scope of the employment, Instruction 5,

page 8. I take exception to the word "and" instead of the word "or." [1030]

The Court: On what line?

Mr. Banfield: On line 8.

Mr. Strayer: Of Instruction No. 5.

The Court: Yes, I will change that to "or."

Mr. Andersen: Instruction 5?

Mr. Strayer: And on line 8, should be "or" instead of "and."

Mr. Strayer: Instruction No. 6 raises a problem, and perhaps the exception should come from the defendant rather than the plaintiff. The last paragraph submits to the jury whether or not in finding a verdict against either defendant or both defendants, and it has then, for myself and Mr. Banfield, that that particular act of unlawful activity was performed by Local 16 and to the effect the I.L.W.U. was involved only to the extent they aided and assisted Local 16 in its activities. If you assume Local 16 is not liable, it would seem to automatically follow that the International would not be liable. I don't think it is correct to find against the International and in favor of the Local.

Mr. Andersen: What instruction is that?

Mr. Strayer: Instruction No. 6. I think if another sentence were added that a verdict could not be returned against the International unless the Local was also found liable, that would be correct. That would also affect one of the forms of verdicts: [1031]

Mr. Banfield: The word "either" is what makes it improper, I believe, because under that alterna-

tive the jury could find the International liable and the Local not, and I feel the Court would either have to set the verdict aside or it could be argued by the defendants that if the Local—since the Local has been absolved, therefore the Court must absolve the International, so that, I believe, is clearly objectionable. It could be cured by the addition of the words "however, the International cannot be found liable unless you find the Local 16 liable."

The Court: I don't see it that way. I realize that a verdict of that kind would be inconsistent, but that is not the kind of inconsistency that would determine it. Verdicts of that kind are rather common where there is more than one defendant.

Mr. Strayer: The liability of the International, if it has any, is vicarious as the result of the activities of the Local, comparable to master and servant, where the master is charged as the result of the servant, and the jury might find a verdict against the master and not the servant.

The Court: That would appear, certainly, to be quite an objection if there was no evidence here of any acts by the International, then the relationship wouldn't be fatal, as I say, to a verdict against the parent organization.

Mr. Strayer: What your Honor has reference to is it [1032] would possible for the jury to find that the International had itself engaged in activities, induced people not to handle our products, but that the Local had not. That is possible, but contrary to the theory on which we tried the case, but it is a conceivable theory.

Mr. Andersen: So far as defendants are concerned, and each of them, may it please the Court, we wish to object first to the failure and refusal of the Court to give our instructions No. 1 through 14.

The Court: I think No. 14 was given.

Mr. Andersen: I beg your pardon?

The Court: Fourteen was given.

Mr. Andersen: Our objection with respect to No. 1, the failure of the Court to submit to the jury public policy in relation to this type of controversy in relation to the Taft-Hartley Act; with respect to our proposed Instruction No. 2, the objection is the same, mainly a failure of the Court to instruct regarding the public policy and also failure of the Court to instruct that the Taft-Hartley Act has territorial limitations and has no applicability in Canada. Also in relation to No. 2, that in so far as the public policy of the Act is concerned, in relation to argument the other day on an advised verdict, that the Juneau Spruce unreasonably refused to enter into negotiations. With respect to No. 3, our objection there is that it is at all times, as we understand the law [1033] under the Taft-Hartley Act, for an employer to bargain with any person claiming to represent employees as the Local 16 did here. The fact, of course, that they are not permanent employees, but may be intermittent employees, is an immaterial matter, and also with respect to the matters of carpenters and plumbers, etc., under the Taft-Hartley Act, those carpenters and plumbers,

etc., would have the right to bargain with the employer in the manner set forth in our instruction. With regard to Instruction No. 4—do you wish to comment or shall I continue?

The Court: I will break in.

Mr. Anderser: With respect to No. 4, we think from the facts of this case it was necessary to advise the jury that the Juneau Spruce Corporation could, with the consent of the I.W.A., have assigned the work to the Longshoremen, and that simply because an assignment may have been made means that such assignment is not irrevocable. With relation to No. 5, which relates to peaceful picketing and the rights to peaceful picketing under the laws of the United States, we object to the failure of the Court to give that instruction, particularly as it relates to peaceful picketing and relates to coercion, inducement or intimidation, and also of the failure of the Court to instruct as suggested in the final paragraph on the question of whether or not M-271, they themselves independent of Local 16 or the other defendant, eventually did [1034] what they agreed to do. With respect to Instruction 6 we object to the failure of the Court to instruct on that, as we think it embodies a very important rule, the law of agency. An agent cannot bind an agency by declaration.

The Court: I think it is in there, unless it has been overlooked because of the inability of the Reporter to be working on instructions and reporting arguments at the same time.

Mr. Andersen: With respect to requested instruction No. 7, we object to the failure of the Court to give that as it relates to the precise and definite manner in which damages must be proved. With respect to our Instruction 8, we object to the failure of the Court to do that, though the Court has ruled on that during the trial, as it relates to the intents of the contract even from one entity to another, that is based on 170 Federal, which was discussed the other day during the argument; in other words, being defendant's position that the contract did carry over and that Juneau Spruce was bound by its course of conduct by the contract that was then in effect on April 30 between Juneau Lumber and this Local, and of course also we object to the failure of the Court to instruct as set forth in the paragraph of Instruction 8, the bargain in good faith aspect of the instruction, and that is based on applicable provisions of the Taft-Hartley Act requiring employers to bargain at all times in good faith. With [1035] regard to Instruction 9 based upon 9(c)(1)(b) of the Act, and the Court failed to instruct on it, if there is a dispute between two groups or two representatives as to who should perform the work, then the employer has a right to petition the Board as set forth in those provisions. We think under the facts of this case that it is proper for that instruction to be given. With respect to No. 10, it is a different statement of the preceding instruction with regard to failure or refusal of the employer to petition the National Labor Relations

Board to have an investigation and immediate certification, and we take the position that a failure so to do under the section of the Taft-Hartley Act mentioned, is a matter which at least could be considered as a matter of mitigation of alleged claimed damages. We also object to the failure of the Court to give our requested Instruction No. 11, and of course the Court has also ruled on this question in the case in chief. That refers to the fact that contracts may be oral or written and may be—that contracts may be formed by custom and practice, customs in the particular trade or occupation, and of course give the jury an opportunity to find that a contract existed, and therefore, the contract existing, and due to the fact that it contained an arbitration clause, it would be a bar to recovery also. We object to the failure of the Court to give requested Instruction No. 12 on the grounds that the Court failed to instruct the jury on public policy of the United States [1036] as set forth in Section 201 of the Act, which is the section that enjoins both employees and employers to peaceably settle issues by conciliation, mediation or arbitration. We feel the failure of the Court to give that, particularly from the evidence that they refused and failed to negotiate, or even set down and talk, is prejudicial to the defendants' case. We object to the failure of the Court to give requested Instruction No. 13, which refers to Section 204 of the Taft-Hartley Act, again enjoining duties upon the employer which were not done and which we think

are material to the defendants' case. We object to the Court's not having given Instruction No. 14 and the words as presented. I had in mind the instruction the Court did give. I also want to object to that particular exhibit going into the jury room for two reasons: first, I think the stipulation during the course of the trial there was entered into with respect to that particular exhibit——

The Court: Was there such a stipulation?

Mr. Andersen: Yes, there was.

The Court: It seems to me that if that were so, no offer of that would have been made in evidence.

Mr. Andersen: Despite other stipulations?

The Court: You didn't object.

Mr. Andersen: Oh, yes, I did on many grounds.

Mr. Strayer: Yes, to the introduction. It was offered solely to prove [1037] lack of certification, but counsel never offered to stipulate there was a certification.

Mr. Andersen: I think the facts show neither were certified, and it was brought out in evidence.

The Court: I don't think there was any testimony to that either way.

Mr. Andersen: I may be in error, your Honor, I can't profess to accurately quote the record after two weeks of trial, but my best recollection is the record will show that was stipulated to between counsel, mainly that neither of the labor organizations involved, the I.L.W.U. as well as I.W.A., were certified. Of course, there could be collective bargaining without certifying. I object to it going to

the juryroom because it is not properly in evidence. That is why depositions are not permitted in evidence, because usually there are matters stricken.

The Court: I think the objection is well taken, but I think it should have been taken more timely, though it is not too late if the parties wish to stipulate that the Unions were not certified, and if it is stipulated it won't go in.

Mr. Strayer: I don't recall the stipulation.

The Court: I mean now.

The Strayer: We don't want our clients to be prejudiced in any way; if we feel that they will not be, we are willing to stipulate there was no certification [1038] and it will be withdrawn and not go to the jury.

Mr. Andersen: Mr. Paul states, and we never alleged we were certified——

Mr. Strayer: You denied our allegation.

Mr. Andersen: But denials and pleadings have no place in the juryroom. There is no evidence against it; therefore, as a matter of testimony it is undisputed. It is cumulative on that, but we are not objecting to evidence at this time.

The Court: But if you are willing to stipulate, I suggest calling the jury for the purpose of stipulating and the exhibit will be withdrawn.

Mr. Andersen: With respect to the instructions as given, did I say fourteen—I believe I did, your Honor—let's see, with respect to the Court's Instructions as given, with respect to Instruction No. 4, as propounded by the Court, we object to the

first paragraph on the grounds that it is too limited a definition of the common law rule of agency, and too narrowly defines the quantum of proof. We object to the third paragraph of the same instruction on the grounds that there is—that the instruction is again too narrow, and while there was testimony as to who Mr. Bulcke was and who Mr. Berry was and who Mr. Albright was, who are the only alleged International officers referred to by the plaintiff, the instruction again negatives the idea, or rather carries [1039] an insufficient amount of proof necessary to prove the agency. There is no proof in the record as to the authority of either Mr. Albright, Mr. Bulcke or Mr. Berry, in so far as the allegations of the complaint or proof are concerned, and therefore we feel this portion of the instruction is entirely too narrowly drawn and leaving out the question of any actual agency or authority that may have been conferred upon those particular people. We object to the final paragraph of page 4 on the ground that it doesn't state the law applicable to this case, and also to the further ground that in respect to time, may it please the Court, it isn't sufficiently limited. There could be no claim here so far as the International is concerned. The pleadings refer to April 10 as the date. It was true Mr. Bulcke was here six or seven months before that time and also true that Mr. Albright was here about four or five months before that time, that is, prior to the time of the complaint, and the remoteness of time in relation to Mr. Bulcke and

Mr. Albright, we feel in relation to the entire Instruction No. 4—it isn't limited to time.

The Court: It is limited by Instruction 5 as to time, and the Court can't repeat each point in each instruction.

Mr. Andersen: I understand that, your Honor. With respect to the last paragraph of Instruction 4 on page 7, we also object to that on the ground that the language is [1040] entirely too general and doesn't state the law of agency in relation to the facts of this case. Under the common law rule of agency I don't believe there is any rule that he should have known or by ordinary care a person should have known, what an agent may or may not have done. With respect to No. 6, we want to object to the language thereof, particularly in so far as it relates to a conspiracy. I don't believe under the pleadings any reference to a conspiracy is proper.

The Court: Well, it is dealt with from an evidentiary standpoint only, and of course it is pretty well settled that once the facts show or tend to show an agreement or a combination of that kind, the rules of evidence as to conspiracy apply even though not charged.

Mr. Andersen: We want to object on the further ground—I don't find the Court's reference to April 10—on the further ground in the instruction the Court did not limit it so far as the International to April 10, if they were damaged to that time, and the International wouldn't be liable. May 8 is the date

of Mr. Albright named he first mentioned subsequent to April 10. With respect to No. 11, Exhibit No. 20, Defendant's Exhibit No. C, I believe, we object to that instruction for the reasons previously stated.

Mr. Strayer: What was that?

Mr. Andersen: The Court's Instruction No. 11 on [1041] page 15—no, I think I am in error—no, Exhibit C there is the contract, I believe, that was in effect between Juneau Lumber Mill——

The Court: No, it is the contract between the Waterfront Employers and the I.L.W.U.

Mr. Andersen: And also, as Mr. Schmidt testified, between Local 16—it had Local 16 on its face——

The Court: The Juneau Lumber Mills name isn't anywhere on it.

Mr. Andersen: Local 16 is, and Mr. Schmidt testified Local 16's name is on it, and Mr. Schmidt testified that was the contract that had been in effect prior to May 1, and he testified they carried on under it. We object to the instruction upon the fact that it is a matter that should go to the jury and is fully and completely in evidence, admitted in evidence in relation to Mr. Flint's testimony, showing the contract and good faith on the part of the Longshoremen.

The Court: The position I have taken——

Mr. Andersen: I am making the objection for the record. I assume your Honor's position is the same. I think that concludes it, although it must

necessarily be a bit sketchy in the present scheme of things.

Mr. Strayer: Your Honor, may I add one exception on No. 11? We feel Exhibit C should not go to the jury for any purpose. It was offered under the promise that they [1042] would connect it and show a continuing contract and they did not. It had no relevancy, rebutting Mr. Flint. He said they never proved to him there was such a contract. I can't see what relevancy it has in the case under those circumstances.

Mr. Paul: May it please the Court, for the same reasons suggested by counsel in regard to the last paragraph in Instruction No. 6, we make the objection to the last paragraph in Instruction No. 6 and also to the form of Verdict No. 2.

The Court: You mean you think that they are either both guilty or neither?

Mr. Paul: No, no—that if the defendant Local is innocent it will be impossible for the International to be found guilty. Under the verdict they might assume the situation that the Local would be released, Verdict No. 2.

The Court: I understand. Is that all the objections there are?

Mr. Andersen: Yes, your Honor.

The Court: With reference to Exhibit C, my notes show that was introduced on the promise it would be connected up, and also show that it had been renewed. It expired by its date in 1942, and I do not recall any evidence of its renewal, and

hence I am inclined to agree with counsel for plaintiff that that also should not go to the jury.

Mr. Andersen: To which we also except, may it please [1043] the Court. The Court will recall the argument by the respective counsel on the point also. I think I noted an objection to not including C in the exhibits.

The Court: Yes, you have.

(Whereupon the jury returned and all took their places in the jury box.)

The Court: Ladies and gentlemen of the jury, it has been stipulated by counsel that neither of the labor organizations, the defendants, is certified or has been certified, by the National Labor Relations Board and that makes it unnecessary——

Mr. Andersen: I thought that also referred to the I.W.A., all labor organizations.

The Court: I say, each defendant. I think that covered it.

Mr. Andersen: Also I.W.A., they weren't certified either.

The Court: I see, that is also the I.W.A. Not any of them is certified, and that makes it unnecessary to submit to you Plaintiff's Exhibit No. 20. There has been an instruction here about that exhibit and also Exhibit C, but neither of those exhibits will go to you.

(Whereupon the bailiffs were duly sworn to take charge of the jury.)

The Court: Ladies and gentlemen, perhaps I

should [1044] further inform you that they are not submitting a sealed verdict to you, that your verdict will be received at any time that you arrive at one. You may now retire to your jury room to consider your verdict.

(Whereupon the jury retired to the jury room at 4:45 o'clock p.m. in charge of the bailiffs, to deliberate upon a verdict.)

(Whereupon Court adjourned until 10:00 o'clock a.m., May 13, 1949, subject to call; reconvening at 9:05 a.m., May 13, 1949, with all parties present as heretofore and the jury all present in the box; whereupon the following proceedings were had:)

The Court: Ladies and gentlemen of the jury, I understand that you wish further instructions. Am I correct in that?

Mr. Foreman: Yes, sir, we do need further instructions.

The Court: Upon what points or questions?

Mr. Foreman: Primarily upon the basic duties of a juror and relevant and irrelevant points in the case, clarification of the issues at stake and the law governing them, and reiteration of the duties of a juror I think would help.

The Court: Well, the law precludes me from giving you any instructions orally. I will have to prepare the additional instruction on those points in writing and submit them [1045] to you in the same way that the remainder of the instructions

were given you. The Court will therefore be in recess as far as this case is concerned until called, and the jury may again retire.

(Whereupon the jury retired from the court-room and Court recessed until called; reconvening at 11:35 o'clock a.m. May 13, 1949, with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:)

The Court: Ladies and gentlemen of the jury, in response to your request, you are instructed as follows:

(Whereupon respective counsel were furnished copies of the Court's Supplementary Instructions to the Jury and the Court read his Supplementary Instructions to the Jury.)

The Court: Do the parties wish to take their exceptions in the absence of the jury?

Mr. Andersen: I assume Mr. Banfield will make the same stipulation?

Mr. Banfield: Yes.

The Court: The jury may now retire until called.

(Whereupon the jury retired from the court-room.)

Mr. Andersen: We object, may it please the Court, to all of the instructions on one general ground with respect to all of them, that the instructions are the equivalent of a directed verdict for the plaintiff; that is, considered [1046] together. With

respect to specific instructions, we object to No. 1, the first paragraph, for the reason that it joins a commentary and the advisability of yielding to the demands or requests of the majority. The second paragraph we object to on the grounds that it is coercion of the jury in an effort to coerce a verdict in the case. With respect to Instruction No. 2, we wish to object to the first paragraph for the reason that the evidence shows only that the Longshoremen sought to negotiate with the plaintiff in the case, and there was a refusal to negotiate. This is an issue in the case, relating to the dispute. We wish to object on the further ground that there should have been a separation in the circumstances of the work done at the Alaska Steamship Dock here. This instruction throws all of the alleged claims of the plaintiff together.

We also wish to object to these instructions upon the general objection of extra-territoriality, to which we directed your Honor's attention before, also that it fails to consider the objections we made before about the necessity as required in the Act and particularly with respect to the public policy matter that we argued before, in that it negatives the public policy and doesn't take into consideration the public policy of the Act, particularly in relation to the unreasonable and arbitrary refusal of the plaintiff to bargain, which is an admitted fact in the evidence.

Also, we object in so far as it relates to the International, that the question of the quantum of evidence necessary to prove principal and agency in

order to hold the principal liable, is not adequately or properly set forth. The same objection we make to Instruction No. 3, that is with respect to the law applicable to proving principal and agent, and with respect to the word "ratification" in the instructions. We again call attention to 8(c) of the Act upon which an instruction was requested, and which should have been embodied in that instruction. The same objection that we make to No. 3 we make to No. 4. It over-simplifies the possibility of settling responsibility on the International, with respect to the absence of quantum of proof to prove agency. We object to the last portion of that instruction on page 5, which improperly sets forth—we do not understand that a principal may be held for acts of an agent when such acts have not either been specifically authorized or when particularly such acts have been forbidden, or are unlawful—particularly forbidden.

We also object to Instruction No. 5, that it is an over-simplification of the issues and a directed verdict on the part of the Court, and we think that the issues set forth in our instructions to which we incorporated these instructions, set forth and raise issues material to the defendants' case. We do not consider that the only issues are whether [1048] the things alleged here were done, although I think those objections were covered when we made our motion for an advised verdict at the close of the plaintiff's case, and we object to the refusal of the Court to give our Instruction No. 15—I believe is

the number—which was submitted with the Court's approval during the recess.

Mr. Strayer: If the Court please, with reference to Instruction No. 2, plaintiff would like an exception on the ground that it leaves as an issue for the jury whether plaintiff was damaged. We consider your Honor correctly stated the legal result, except we haven't considered it an issue by the jury, whether plaintiff did in fact suffer damage. We have shown, I think, that some damage did occur and are not agreed on what amount of damage, but I think it follows that plaintiff is entitled to damage for some amount.

With reference to defendant's exception to Instruction No. 4, the last paragraph, page 5, the use of the word "forbidden"—I think your Honor's instruction is a correct statement of the law; however, I have some doubt in my mind whether it would apply to this case. It may be abstract.

Mr. Andersen: What instruction?

Mr. Strayer: No. 4, the last paragraph, page 5—the language used there. I think the principle would be applicable where a negligent act was involved, but here the charge is aiding and assisting in an unlawful act. I doubt [1049] if that rule of law would come in. I rather think the word "forbidden" should be stricken from that instruction.

Mr. Banfield: "And forbidden."

The Court: As I recall that decision in the Colorado case, the Supreme Court held just that whether it is wanton, willful, reckless or forbidden—

it may be that it is abstract in the sense here, but, however, I think the instruction I gave yesterday submitted by you had the same qualification in it.

Mr. Strayer: I don't recall which instruction your Honor refers to. A Requested Instruction, do you mean, your Honor?

The Court: Yes. It was a short instruction. I think it was your instruction on the scope of employment.

Mr. Strayer: No, your Honor, there is no reference in that instruction.

Mr. Banfield: If your Honor please, you must be referring to Instruction 12, the last line, our requested Instruction No. 12 which was rejected, but the word "forbidden" I am quite sure we never used.

Mr. Andersen: I would like to add one further objection also, your Honor.

The Court: That part of the clause containing the word "forbidden" is stricken, and lines 20 and 21 of Instruction 2 are also stricken. You say you have another objection? [1050]

Mr. Andersen: Yes, I have, to Supplemental Instruction No. 1, may it please the Court. I think that should be amended in general to advise the jury that this instruction is not to be too literally construed, that it is the duty of each juror to make up his own individual mind and should not change his opinion regardless of the majority, unless and until he or she personally becomes convinced by virtue of all the evidence and circumstances of the case, that his or her opinion should be changed.

The Court: I think that is covered by Instruction No. 13 given yesterday.

Mr. Andersen: I don't have that before me, your Honor.

The Court: If that is all, we will call the jury in.

Mr. Strayer: May I get it straight on my copy, of Instruction 2? Our lines don't coincide. Could your Honor tell us the starting words?

The Court: The first two of the last three lines.

Mr. Strayer: And Instruction No. 4, the words stricken are "And forbidden by the principal or employer"? Is that correct?

The Court: Yes.

Mr. Andersen: What are you striking? What instruction? [1051]

Mr. Strayer: No. 4, page 5.

Mr. Andersen: Of the new instructions—what is stricken?

Mr. Strayer: "And forbidden by the principal or employer."

The Court: Call the jury.

(Whereupon the jury returned and all took their places in the jury box.)

The Court: Ladies and gentlemen of the jury, you may now retire for further deliberation.

Mr. Banfield: If the Court please, does the Court wish to call attention to the changes?

The Court: I have made them.

Mr. Banfield: As long as they know about them——

The Court: I made a few slight changes, ladies and gentlemen, in two instructions, by crossing some words out and you can see those for yourselves.

(Whereupon the jury retired from the courtroom and Court was recessed at 12:10 o'clock p.m., May 13, 1949.)

(Thereafter, Court having reconvened at 2:00 o'clock p.m., May 13, 1949, the plaintiff appearing by Norman Banfield and Manley B. Strayer, of its attorneys; the defendants appearing by William L. Paul, Jr., and George R. Andersen, of their attorneys and the jury being absent from the courtroom; and before adjournment the following occurred:) [1052]

The Court: By the way, before counsel in the case—before counsel leave the courtroom, I am inclined to allow the jury to return a sealed verdict if they don't agree by a certain time today or tonight. I overlooked the fact when I told them they could return a verdict any time that nobody at our house can hear the telephone unless they happen to be downstairs.

Mr. Andersen: Suppose they don't agree—that means they just stay? Only if they reach a verdict——

The Court: They can go home only if they reach a verdict.

Mr. Andersen: May I be permitted—when I was objecting to the Supplemental Instructions I don't know whether I gave the reason as to No. 15, our purported Instruction No. 15. The basis upon

which I object—it may be repetitious, your Honor—was that the Court failed and refused to give the instructions and failed to apprise the jury of those statements and declarations and arguments, etc., which under the section referred to they may make and do under the terms of the Act itself.

The Court: Well, I took the view that it was, rather the aspect was not connected there. As I see it, whatever declarations or statements were made are not so important. It is the acts that followed, the acts set forth in the complaint. I think I will call the jury in about 5:00 o'clock [1053] then for the purpose of instructing them with reference to a sealed verdict.

(Whereupon, Court was recessed.)

(Thereafter, Court reconvened at 4:15 o'clock p.m., May 13, 1949, with all parties present as heretofore with the exception of Mr. Roden, and the jury all present in the box; whereupon the following proceedings were had:)

The Court: Ladies and gentlemen, have you reached a verdict?

Mr. Foreman: We have, your Honor.

The Court: You may hand it to the Clerk. You may read and file the verdict.

Whereupon Verdict No. 1 was read by the Clerk, finding for the plaintiff and against both defendants and assessing plaintiff's damages in the sum of $750,000.00; and thereupon, at the request of counsel for the defendants, the jury was polled and

each member of the jury answered individually in the affirmative as to his concurrence in the verdict rendered, with no negative answer, whereupon the jury was excused and retired from the courtroom.

Mr. Andersen: I understand motions for new trials, according to your rules, are made in writing?

The Court: Yes.

Mr. Andersen: The time period is what—three days or teh days? [1054]

The Court: Well——

Mr. Banfield: Two days; two or three days.

The Court: I am confused as between criminal cases and civil cases—three days, within three days.

Mr. Andersen: Do you exclude the first day?

The Court: Yes, and holidays.

Mr. Banfield: What was that?

The Court: Three days.

Mr. Banfield: And if the Court please, I intend to be out of town for a few days. I expect to be back for the next motion day. I just want to tell Mr. Andersen.

Mr. Paul: If there is a motion made, it only has to be made within three days.

Mr. Banfield: Yes, but I thought Mr. Andersen might want to get away and he might want to make it and argue it.

Mr. Andersen: I guess it would go over until the usual motion day. I could check, but I assume the time for appeal only runs from and after the judgment?

The Court: The judgment.

Mr. Andersen: The judgment would be allowed after the termination of the motion?

The Court: Yes, that stays any action as far as judgment is concerned.

Mr. Banfield: We will take the motion up next Friday. [1055]

Mr. Andersen: Then there is no judgment entered now?

The Court: No.

(Whereupon Court was adjourned.)

(Thereafter, Court having convened at 10:00 o'clock a.m., May 20, 1949, the plaintiff appearing by Norman Banfield of its attorneys, and defendants appearing by William L. Paul, Jr., of their attorneys, the above-entitled cause came on for hearing on motions and the following occurred:)

Mr. Paul: I have informed counsel that the first two motions will be submitted, your Honor; however, I should like to have the opportunity of stating my position with regard to the motion for additional time.

The Court: Well, you may argue that in the regular order.

Mr. Banfield: Plaintiff is ready.

The Court: You say the first two motions you submit without argument?

Mr. Paul: Yes, your Honor.

The Court: The motions will be denied, therefore, and the third motion will be argued in the regular order.

Clerk of Court: Isn't that last one the one you submitted to the Court the other day and the Court denied?

Mr. Paul: The Court has given me permission to submit my authority. [1056]

Mr. Banfield: It would be all right to have a ruling on the motion for judgment notwithstanding the verdict, but the second is a motion for a new trial. If that is for a new trial, if it is denied, that third couldn't be argued. Mr. Paul, I think, means the motion may be denied for judgment notwithstanding the verdict and then argue the motion for additional time and the other one.

Mr. Paul: I don't think it is inconsistent.

The Court: I think the inconsistency is more apparent than real.

(Thereafter, and before adjournment, the above-entitled cause was called up for hearing on the motions and the following occurred:)

Mr. Paul: May it please the court, the motion and affidavit for additional time within which to file additional grounds and supporting affidavits, re motion for new trial, was filed at 4:45 last Monday, which I understand was the last day within which the usual three days allowed for the filing of the motion. It had been approximately one hour before that the main motion for new trial was filed. We conceived it advisable on the parts of the defendants to not include in the main motion any ground that the jury had been swayed by passion or preju-

dice, because we simply didn't have the information and didn't want to be put in a position of alleging the ground when we had at that time no basis, [1057] no suspicion that such a ground existed. At that time I understand the Court became aware of the motion for additional time and overruled the motion. I believe it was the next day I addressed myself to the Court, asking this opportunity to present authorities in support of the motion, and I think we indicated at that time that no further investigation would be made of any of the jurors by counsel for the defendants because of the nature of the public policy which the Court believed applicable here, that members of the jury should not be questioned.

As I have stated to the Court, I am most circumspect in my conduct and of the rulings of the Court not to infringe upon anything, or any possibility of infringing upon anything. I will be very brief.

To conclude, I have done nothing further in the investigation of individual jurors. Now, I understand from what the Court has said that there is in the Court's mind the public policy that the verdict of the jury should be given every encouragement to stand; that is to say, attorneys on the losing side are not permitted to quiz jurors, to ascertain if misconduct had occurred in deliberations of the jury. Now, I am unacquainted with such public policy and in my investigation of the authorities I can find I suggest——

The Court: Better not argue that point. I am

certain the public policy is to discourage parties or litigants [1058] from quizzing jurors as to the method by which they arrive at a verdict.

Mr. Paul: I principally make one citation to the Court. It is very close in point, to support my position. That appears in Volume 52 ALR on page 33.

The Court: What is the topic?

Mr. Paul: Quotient verdict. The citation I have given is in the annotation. The annotation begins at page 41 and is entitled Quotient Verdicts. The citation beginning at page 33 is the case of Benjamin vs. Helena Light and Railway Company, Montana Supreme Court, discussing the topic of quotient verdicts. I need only make reference to what the Court had before it, which appears on page 37. There affidavits were obtained from every single member, with the possible exception of one—every single member of the jury. That indicates the scope of the examination of the jury on both sides. The Court concludes what it feels is the general principle at the end of page 40, from which I gather it is the primary public policy that the jury shall obey the instructions of the Court and apparently everything that both sides had done in examining the jury after their deliberations and their discharge, in getting all these affidavits, that there was nothing wrong connected with it in view of the primary public policy that the jury follow the instructions of the Court [1059]

Mr. Banfield: If the Court please, Mr. Paul has failed to state what he intends to show by these

affidavits, and I think that is quite material in this case. He states in his motion that he believes they acted with passion and prejudice and now gives a citation with reference to a quotient verdict. He seems to be flitting from one ground to another. I would like to call the attention of the Court to the fact there was a poll of the jury in this case. The rule stated in 64 Corpus Juris 1062 is, and this is under the subject of inquiry as to the grounds of verdict, that "If the poll of the jury is conducted by counsel, a juror cannot be interrogated as to the grounds of his assent or dissent." If he is talking about a quotient verdict, that would be very applicable, and the poll of the jury was made by the defendants.

In 64 Corpus Juris page 1108 it is stated—this is under the heading "Evidence Affecting Verdict—a. Affidavits and Testimony of Jurors to Sustain, Impeach, or Explain. Jurors will not be heard to impeach a verdict duly rendered by them and recorded, and their affidavits introduced for such purpose will be disregarded. Thus jurors cannot impeach their verdict by affidavits or testimony that the verdict was the result of misapprehension, or mistake of fact, or was arrived at by lot, or by averaging estimates, or to disclose the incompetency or misconduct of their fellow jurors, or to show what improper [1060] methods they employed to arrive at the verdict." This is directly in point on the quotient verdict. "Or what items were allowed or disallowed in computing the amount of the ver-

dict, or that they did not understand the effect of their verdict, or that, had the juror known of certain evidence, he would not have rendered the same verdict, or that improper matters were considered by the jury." Now, affidavits can be used under these circumstances. "But affidavits of jurors are admissible to show that the verdict, as received and entered of record, by reason of a mistake does not embody the true finding of the jury, or to correct an erroneous statement of the verdict to the court or entry by its clerk, or to remove an ambiguity, or, where a sealed verdict is returned without specifying the amount of the recovery, to show what they intended to be understood as their verdict. Jurors are competent witnesses for the proof of extraneous facts which may have influenced their conduct, as, for example, coercion on the part of the bailiff, or matters which took place outside the court, but what took place while the jury were kept in the custody of the officer of the court for the purpose of deliberation is not matter outside of court. Affidavits or evidence of jurors are admissible when made in support of or to explain a verdict, as, for instance, by showing whether interest was computed on plaintiff's claim." And that is the law. The rule is that the Court can refuse [1061] to even summon the jurors, but certainly for counsel to go out and secure jurors for the purpose here, is absolutely out of order and cannot be done under any circumstances, but if there is reason to believe there is a mistake, then the jurors can be summoned, but not for invading the privacy of the jury.

We ask at this time that the motion be denied and the motion for a new trial be denied, and judgment entered, and the papers are prepared.

Mr. Paul: May it please the Court, in preparing my argument here I got about every citation and I refer to 46 ALR, page 1509, in which the editors express their concern for a statement which appeared in RCL. It is very much like counsel read to the Court from Corpus Juris.

The Court: Here is the view I take of the motion: it is predicated on the possibility of obtaining something which there has been a week to obtain, and there is no showing made that it has been obtained. It seems to me all the motion sets forth is speculation; that is, the motion is made for the purpose of obtaining an opportunity to question the jurors in the hope that will be found. It has been a week since the verdict. I don't see how I can consider it. It doesn't present ground, it presents hopes, and that isn't sufficient to move the Court with. These items are beside the point. When you speak of a quotient verdict—I haven't [1062] looked into it. It might upset it, but there is nothing here to show that there was.

Mr. Paul: As the affidavit indicates, I had commenced my investigation, your Honor, and I will be frank to state to the Court I had been able to talk to one juror by the time the Court overruled the motion, but because I might be presuming on the prerogatives by continuing the investigation as an officer of the Court, I withheld; otherwise, I think

I would have been able to present affidavits this morning. I felt from the one there was reasonable grounds for continuing the investigation and not hopes.

The Court: I am not speaking of what is in your mind, but I can only consider what is in this motion. Even though there may be some ground for questioning the jurors, it seems to me three days is sufficient time to obtain something definite. The Court is confronted with a motion, not speculation.

Mr. Paul: The three days included Saturday and Sunday, and it was almost impossible to do anything during those times, so I concluded the investigation with one juror, and spent the rest of the time writing up the motion for new trial and about four thirty in the afternoon realized I wouldn't have time, so I filed the additional motion we are now discussing. As I say, I may have been too cautious in following this procedure. I didn't want to do anything wrong [1063] in so far as this Court is concerned by examining jurors. My information Tuesday morning was that the Court overruled my motion. In the face of that it seemed useless and would be bordering on contempt. I didn't care to undertake that responsibility.

The Court: I had no idea this was the same motion I denied several days ago. I thought it was another motion, but as I say, it certainly lacks the specification of any definite ground upon which the Court can act. The motion is denied.

Mr. Banfield: If the Court please, I have the

orders here prepared. I have the form of the judgment prepared in this case.

Mr. Paul: Well, I am going to object to any consideration, your Honor, except upon notice.

Mr. Banfield: I want to present it to the Court at this time, one reason is to have the attorneys' fees set by the Court. The complaint requested attorneys' fees of $10,000.00 in this case, and plaintiff's costs and disbursements.

The Court: Do you have any objection?

Mr. Paul: It is the first time I have seen it, and I would like to have an opportunity of getting in touch with Mr. Andersen.

The Court: You wish to have time to file objections? [1064]

Mr. Paul: It was just put in front of me.

Mr. Banfield: It is a matter of right as an ex-party matter. Two days are allowed after entry to take exception. The judgment can be entered by the Court. It is not necessary that approval of judgment be given by the adverse party, and we don't want this judgment to lay here until next June 6 when the Court returns. There is nothing to a judgment of this kind, it can be examined in one minute.

The Court: Except in the practice here, the practice has been to give the opposing side an opportunity to examine it and determine whether they want to object and to have the objections heard.

Mr. Paul: Do I understand your Honor that there will be even no motion day next Friday?

The Court: No, there is not going to be any motion day. Well, it seems to me that the form of the judgment here is so short that you could determine whether you want to object to it and if so, state the grounds of your objection.

Mr. Paul: My point, your Honor, is, following the usual practice, I don't have the final say. It is true I am the attorney of record, but Mr. Andersen is still in the case and I am duty-bound to consult with him.

The Court: Well, Mr. Andersen isn't here.

Mr. Paul: He isn't here, he is in San Francisco. I certainly could do that by next Friday and get an answer back, [1065] too.

The Court: Well, you mean no ground of objection occurs to you, but you think Mr. Andersen might have some?

Mr. Paul: I haven't even looked at it.

The Court: Well, the Court won't pass on it at this minute.

United States of America,
Territory of Alaska—ss.

I, Mildred K. Maynard, Official Court Reporter for the hereinabove entitled Court, do hereby certify:

That as such Official Court Reporter I reported the above-entitled cause, viz. Juneau Spruce Corporation, a corporation, vs. International Longshoremen's & Warehousemen's Union, an unincorporated association, and International Longshore-

men's & Warehousemen's Union, Local 16, an unincorporated association, No. 5996A of the files of said court;

That I reported said cause in shorthand and myself transcribed said shorthand notes and caused the same to be reduced to typewriting;

That the foregoing pages numbered 1 to 1066, both inclusive, contain a full, true and correct transcript of all the testimony and proceedings at the trial of the above-entitled cause, to the best of my ability.

Witness, my signature this 1st day of March, 1950.

/s/ MILDRED K. MAYNARD,

Official Court Reporter, U. S. District Court, First Division, Territory of Alaska.

[Endorsed]: Filed April 11, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
Territory of Alaska, Division No. 1—ss.

I, J. W. Leivers, Clerk of the District Court for the Territory of Alaska, First Division thereof, do hereby certify that the foregoing and hereto attached 212 pages of typewritten matter, numbered from 1 to 212, both inclusive, constitute a full, true and complete copy, and the whole thereof, of the

record prepared in accordance with the Praecipe, Supplemental Praecipe, Suplemental Counter Praecipe and Supplemental Praecipe of the Appellant on file herein and made a part hereof, in Cause # 5996-A, wherein the International Longshoremen's and Warehousemen's Union, an unincorporated association, is Defendant-Appellant and Juneau Spruce Corporation, a corporation, is Plaintiff-Appellee, as the same appears of record and on file in my office; that said record is by virtue of an appeal and Citation issued in this cause and the return thereof in accordance therewith.

And I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certification amounting to Sixty Nine Dollars and 75/100 has been paid to me by Counsel for Appellant.

In Witness Whereof, I have hereunto set my hand and the seal of the above-entitled court this 20th day of April, 1950.

/s/ J. W. LEIVERS,
Clerk of District Court.

[Endorsed]: No. 12527. United States Court of Appeals for the Ninth Circuit. International Longshoremen's and Warehousemen's Union and International Longshoremen's and Warehousemen's Union, Local 16, Appellants, vs. Juneau Spruce Corporation, a Corporation, Appellee. Transcript of Record. Appeal from the District Court of the Territory of Alaska, Division Number One.

Filed April 24, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit
No. 12527

JUNEAU SPRUCE CORPORATION,
Plaintiff-Appellee,

vs.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an Unincorporated Association, and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 16, an Unincorporated Association,
Defendants-Appellants.

AFFIDAVIT OF GEORGE R. ANDERSEN

State of California,
City and County of San Francisco—ss.

George R. Andersen, being first duly sworn, deposes and says:

That he is one of the attorneys for the defendants-appellants in the above-entitled matter. That on or about the 9th day of June, 1949, the Judge of the District Court for the Territory of Alaska, Division No. 1, made and entered his order allowing an appeal, fixing a cost bond, and setting time for the settlement of a bill of exceptions in the above-entitled matter which is on appeal from the said District Court for the Territory of Alaska to the above-entitled Court.

On or about the 9th day of June, 1949, a stipulation was entered into by and between the attorneys for the defendants-appellants and the attorneys for the plaintiff-appellee in this matter and approved by the Court, a true and correct copy of which stipulation is attached hereto and incorporated herein by this reference and marked Exhibit A.

That said stipulation provides, among other things, that the defendants-appellants' statement of points on appeal and the designation of record, including a transcript of testimony, may await thirty days after filing of the transcript of testimony with the Clerk of the District Court for the Territory of Alaska, Division No. 1, by the reporter of the said Court. Such a stipulation was made necessary because of the fact that it is impossible for defendants-appellants to properly prepare their designation of record on appeal and their statement of points on appeal until the said transcript is filed as aforesaid.

The Court below has approved this stipulation and your affiant prays that this Court also approve this stipulation.

/s/ GEORGE R. ANDERSEN.

Subscribed and sworn to before me this 15th day of June, 1949.

[Seal] /s/ PEARL STOCKWELL,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires January 14, 1953.

EXHIBIT A

In the District Court for the Territory of Alaska, Division Number One, at Juneau

No. 5986-A

JUNEAU SPRUCE CORPORATION,
Plaintiff-Appellee,

vs.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an Unincorporated Association, and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 16, an Unincorporated Association,
Defendants-Appellants.

STIPULATION

It is hereby stipulated between counsel for the respective parties in the above-entitled cause that

the defendants' statement of points on appeal and the designation of the record including transcript of testimony may await 30 days after the filing of the transcript of testimony with the Clerk of this Court by the Court Reporter.

It is further stipulated that in printing the record herein that the title of the court and cause in full on all papers may be omitted except on the first page of said record, and that there shall be inserted in place of said titles on all papers used as a part of said records the words "Title of Court and Cause." Also that all endorsements on said papers used as a part of said record shall be omitted except the Clerk's file marks and the admission of service.

Done at Juneau, Alaska, this June 9, 1949.

/s/ WM. J. PAUL,
Of Attorneys for Appellants.

/s/ NORMAN BANFIELD,
Of Attorneys for Appellee.

Good cause appearing herein, it is So Ordered. June 9, 1949.

/s/ GEORGE W. FOLTA,
Judge.

In the United States Court of Appeals
for the Ninth Circuit

JUNEAU SPRUCE CORPORATION,
Plaintiff-Appellee,

vs.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an Unincorporated Association, and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 16, an Unincorporated Association,
Defendants-Appellants.

ORDER

Upon the reading and filing of the affidavit of George R. Andersen, Esq., and good cause therefor appearing,

It Is Hereby Ordered that the stipulation entered into by and between counsel for the plaintiff-appellee and counsel for the defendants-appellants on June 9, 1949, and approved by the Judge of the District Court for the Territory of Alaska, Division No. 1, in the above-entitled cause which bears No. 5986-A in the records of the said Court be, and the same is hereby, approved.

Dated: June 16, 1949.

/s/ WILLIAM HEALY,
Judge of the U. S. Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed June 16, 1949.

At a Stated Term, to wit: The October Term 1949, of the United States Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Tuesday the seventeenth day of January in the year of our Lord one thousand nine hundred and fifty.

Present: William Healy, Circuit Judge, Presiding;
Honorable Homer T. Bone, Circuit Judge;
Honorable William E. Orr, Circuit Judge.

[Title of Cause.]

ORDER EXTENDING TIME TO FILE TRANSCRIPT OF RECORD AND DOCKET CAUSE

Upon consideration of the motion of appellants for an extension of time to file the transcript of record herein, and docket above cause in this court, and good cause therefor appearing, It Is Ordered that the time within which the certified transcript of record may be filed and cause docketed in this court be, and hereby is extended to and including sixty days from the filing of the transcript of testimony with the District Court for the Territory of Alaska, and that the time within which said transcript of testimony may be filed in said District Court of Alaska is extended to March 10, 1950.

[Title of Court of Appeals and Cause.]

MOTION FOR EXTENSION OF TIME WITHIN WHICH TO PERFECT APPEAL AND FILE TRANSCRIPT

Come now the defendants in the above-entitled matter and move the above-entitled Court for its order permitting defendants to have until 60 days after the filing of the transcript of the testimony with the Clerk of the United States District Court for the District of Alaska within which to perfect their said appeal and to file herein all necessary documents in support thereof.

This motion is based upon the Affidavit of George R. Andersen attached hereto.

Dated: August 20, 1949.

GLADSTEIN, ANDERSEN, RESNER & SAWYER.

/s/ GEORGE R. ANDERSEN,
Attorneys for
Defendants-Appellants.

[Title of Court of Appeals and Cause.]

AFFIDAVIT OF GEORGE R. ANDERSEN IN SUPPORT OF MOTION FOR EXTENSION OF TIME WITHIN WHICH TO PERFECT APPEAL AND FILE TRANSCRIPT

State of California,
City and County of San Francisco—ss.

George R. Andersen, being first duly sworn, deposes and says:

That he is of counsel for defendants-appellants in the above-entitled cause. That said cause was tried before the United States District Court in and for the Territory of Alaska at Juneau, Alaska; that on June 9, 1949, the Notice of Appeal and Order Allowing Appeal to the United States Court of Appeals for the Ninth Circuit were filed in the office of the Clerk of said United States District Court.

That by rule of the said District Court in Alaska and the statutes thereunto appertaining, said Court has authority to allow only 90 days from the time of filing of notice of appeal within which to settle the bill of exceptions under the practice of that Court; that on June 9, 1949, said District Court granted appellants herein 90 days from June 9, 1949, within which to settle the bill of exceptions herein.

That in order to settle the bill of exceptions, it is necessary to have the transcript of testimony taken at the trial, and by virtue of the great volume of business conducted by said United States District

Court in Alaska, affiant has been advised by the reporter of said Court that it will be at least six months from said June 9, 1949, before said transcript of testimony has been completed.

That in order to protect the time and rights of appellants herein, it is necessary that the above-entitled Court, to which jurisdiction has been transferred by said appeal, grant an extension of time to 60 days after the filing of said transcript of testimony in said United States District Court, within which said defendants-appellants may perfect their appeal in this Court.

That in this case counsel for the respective parties have agreed that in lieu of the bill of exceptions, the transcript itself may be filed and the appeal taken in consonance with the new Federal Rules of Procedure applicable to United States District Courts and Circuit Courts of Appeal.

/s/ GEORGE R. ANDERSEN.

Subscribed and sworn to before me this 20th day of August, 1949.

[Seal] /s/ PEARL STOCKWELL,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires January 14, 1953.

[Title of Court of Appeals and Cause.]

ORDER

Upon considering the motion of defendants-appellants herein, supported by the Affidavit George R. Andersen, Esq., and good cause appearing therefor:

It Is Hereby Ordered that said defendants-appellants may have to and including 60 days from the filing of the transcript of testimony in the United States District Court for the Territory of Alaska within which to perfect their appeal herein by docketing said transcript of testimony, together with all other necessary papers in support of said appeal; and it is further Ordered that the time within which the transcript of testimony may be filed in the United States District Court for the Territory of Alaska is extended to January 10, 1950.

Dated: Aug. 25, 1949.

/s/ WILLIAM HEALY,

/s/ HOMER T. BONE,

/s/ WM. E. ORR,

Judges of the U. S. Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed August 29, 1949.

At a Stated Term, to wit: The October Term, 1949, of the United States Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Friday the tenth day of March in the year of our Lord one thousand nine hundred and fifty.

Present: Honorable Clifton Mathews, Circuit Judge, Presiding;

Honorable Homer T. Bone, Circuit Judge;

Honorable William C. Mathes, District Judge.

[Title of Cause.]

ORDER EXTENDING TIME TO FILE TRANSCRIPT OF RECORD AND DOCKET CAUSE

Upon consideration of the motion of appellants for an extension of time to file the transcript of record herein, and docket above cause in this court, and good cause therefor appearing, It Is Ordered that the time within which the reporter's transcript of testimony may be filed in the District Court for the Territory of Alaska, and the certified transcript of record filed and cause docketed in this court be, and hereby is extended to and including May 10, 1950.

[Title of District Court and Cause.]

STIPULATION AS TO RULES

It is hereby stipulated and agreed by and between counsel for the respective parties in this cause that the appeal, preparation of briefs and the form of appeal may be had in accordance with the Rules of Civil Procedure for the District Courts of the United States which have become applicable to Alaska since the judgment of the District Court was entered herein.

Juneau, Alaska, March 8, 1950.

/s/ WILLIAM L. PAUL, JR.,
Of Counsel for Appellants.

/s/ N. C. BANFIELD,
Of Counsel for Appellee.

[Title of Court of Appeals and Cause.]

MOTION FOR ORDER PERMITTING APPEAL IN COMPLIANCE WITH NEW RULES OF FEDERAL CIVIL PROCEDURE

Come now the defendants in the above-entitled cause and move the above-entitled Court for its order permitting the above appeal to be taken and had pursuant to the new Rules of Federal Civil Procedure presently in effect and governing appeals from District Courts of the United States, including

the Territories, to the Court of Appeals for the Ninth Circuit.

This motion is made upon the affidavit of George R. Andersen attached hereto.

Dated: March 21, 1950.

GLADSTEIN, ANDERSEN, RESNER & SAWYER.

By /s/ G. R. ANDERSEN,
Counsel for
Defendants-Appellants.

So Ordered:

/s/ WILLIAM HEALY,

/s/ HOMER T. BONE,

/s/ WALTER L. POPE,

U. S. Circuit Judges.

[Title of Court of Appeals and Cause.]

AFFIDAVIT OF GEORGE R. ANDERSEN

State of California,
City and County of San Francisco—ss.

George R. Andersen, being first duly sworn, deposes and says:

That he is one of the attorneys for defendants-appellants named above. That the above-entitled cause was tried before the United States District Court for the Territory of Alaska and judgment therein entered in May, 1948, at a time prior to

the time when the new Rules of Federal Procedure were applicable to said Territory.

That since said time said new Rules of Federal Procedure, by Act of Congress, have been made applicable to the said Territory of Alaska. That the parties hereto, through their respective counsel, have entered into a stipulation, the original of which is filed with the United States District Court for the Territory of Alaska at Juneau, Alaska, and a copy of which is annexed hereto.

That pursuant to said stipulation, defendants request the above-entitled Court to approve said stipulation and permit said appeal to be taken in accordance with said new Rules.

/s/ G. R. ANDERSEN.

Subscribed and sworn to before me this 21st day of March, 1950.

[Seal] /s/ AGNES QUAVE,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires January 14, 1953.

[Endorsed]: Filed April 6, 1950.

[Title of Court of Appeals and Cause.]

APPELLANTS' STATEMENT OF POINTS ON APPEAL

To the Honorable William E. Denman and Associate Justices of the United States Circuit Court of Appeals, for the Ninth Circuit:

Come now the appellants herein and respectfully state that the points upon which they intend to rely on appeal are each and every of those points set forth in defendants-appellants' assignments of error filed with the United States District Court for the Territory of Alaska, at Juneau, being part of the record filed in the above-entitled Court, pursuant to Rule 19(6) of the above-entitled Court.

Dated: April 29, 1950.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER.

WILLIAM L. PAUL, JR.,

By /s/ GEORGE R. ANDERSEN,

Attorneys for
Defendants-Appellants.

[Endorsed]: Filed May 1, 1950.

[Title of Court of Appeals and Cause.]

DESIGNATION OF THE RECORD ON APPEAL

Come now the defendants and appellants in the above-entitled cause and, pursuant to Rule 19(6) of this Court, designate the following as the record to be printed on appeal:

1. The entire reporter's transcript of all testimony;
2. The instructions given by the Court;
3. The instructions requested by the defendants-appellants and refused by the Court;
4. The entire Clerk's transcript;
5. With respect to all exhibits, subject to the approval of the above-entitled Court, defendants and appellants pray that said original exhibits be not printed, but that they may be referred to by the parties hereto and considered by the Court as though incorporated in the printed record.

Dated: April 29, 1950.

GLADSTEIN, ANDERSEN, RESNER & SAWYER.

WILLIAM L. PAUL, JR.,

By /s/ G. R. ANDERSEN,
Attorneys for
Defendants-Appellants.

[Endorsed]: Filed May 1, 1950.

[Title of Court of Appeals and Cause.]

MOTION FOR PERMISSION TO NOT PRINT EXHIBITS FILED IN THE ABOVE CAUSE

Come now the defendants and appellants in the above-entitled cause, through George R. Andersen, of counsel, and respectfully request the above-entitled Court to grant its permission to permit all of the exhibits herein to be not included in the printed record, but that said exhibits may be considered, and be referred to, by the Court and counsel as though contained in the printed record on appeal.

This motion is supported by the affidavit of George R. Andersen attached hereto.

Dated: April 29, 1950.

GLADSTEIN, ANDERSEN, RESNER & SAWYER.

WILLIAM L. PAUL, JR.,

By /s/ GEORGE R. ANDERSEN,
Attorneys for
Defendants-Appellants.

[Title of Court of Appeals and Cause.]

AFFIDAVIT OF GEORGE R. ANDERSEN, OF COUNSEL, IN SUPPORT OF MOTION FOR PERMISSION TO EXCLUDE EXHIBITS FROM THE PRINTED RECORD ON APPEAL AND PERMITTING COURT AND COUNSEL TO REVIEW THE SAME

State of California,
City and County of San Francisco—ss.

George R. Andersen, being first duly sworn, deposes and says:

That he is counsel for the defendants and appellants herein.

That there are many and bulky printed and written exhibits in the above-entitled cause, including lengthy contracts, printed by-laws and constitutions of trade unions, newspapers and other bulky documents; that a great deal of the relevant portion of said exhibits has been read into the record of this cause and will be printed in the record on appeal; that in the opinion of counsel the proper and expeditious handling of this cause on appeal would best be subserved by not printing said exhibits as part of the record on appeal, but by permitting said exhibits to be considered and referred to by the Court and the parties hereto as though they were actually printed and incorporated in the record on appeal.

Wherefore, defendants and appellants pray that

said Court grant its permission to permit all of the exhibits in the said cause to be deemed a part of the printed record herein and that they may be referred to by the Court and counsel as though printed in said printed record.

/s/ GEORGE R. ANDERSEN.

Subscribed and sworn to before me this 29th day of April, 1950.

[Seal] /s/ AGNES QUAVE,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires January 14, 1953.

So Ordered:

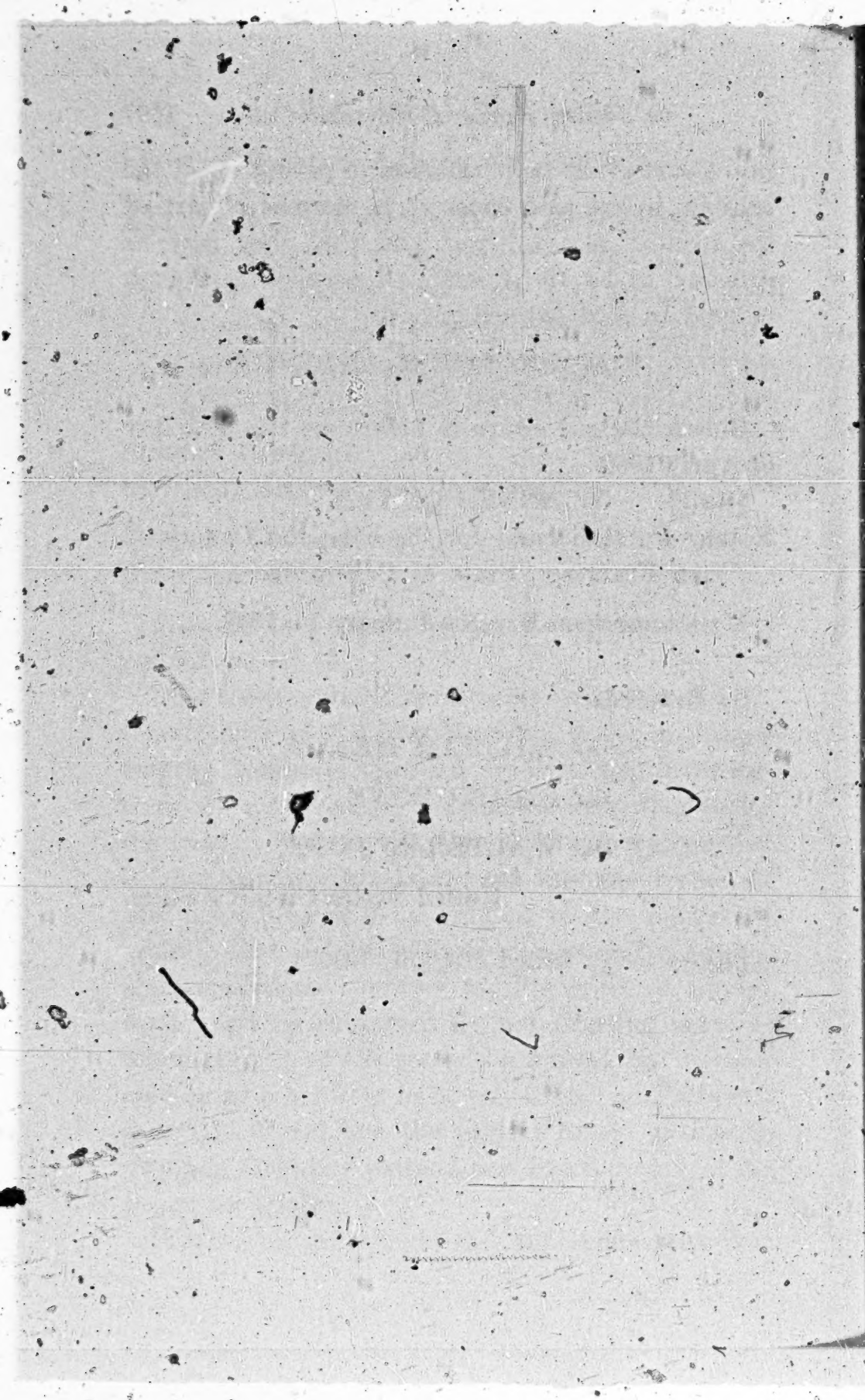
/s/ WILLIAM HEALY,

/s/ HOMER BONE,

/s/ WALTER L. POPE,

United States Circuit Judges.

[Endorsed]: Filed May 11, 1950.



No. 12527

United States
Court of Appeals
for the Ninth Circuit.

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 16,

Appellants,

vs.

JUNEAU SPRUCE CORPORATION, a Corporation,

Appellee.

SUPPLEMENTAL
Transcript of Record

Appeal from the District Court for the Territory of Alaska Division Number One.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

In the District Court for the Territory of Alaska, Division Number One, at Juneau

No. 6996-A

JUNEAU SPRUCE CORPORATION, a Corporation,

Plaintiff,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, an Unincorporated Association, and INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, LOCAL 16, an Unincorporated Association,

Defendants.

COURT'S SUPPLEMENTARY INSTRUCTIONS TO THE JURY

No. 1

Ladies and Gentlemen of the Jury, it is your duty to come to an agreement if you can conscientiously do so. If a large number or majority of the jury is of a certain opinion, the dissenting jurors should carefully consider whether their doubts or differences are reasonable. In most cases absolute certainty cannot be attained and, hence, the minority should listen with a disposition to be convinced to the arguments of the majority.

The plaintiff, defendants and Court have performed their respective duties. Justice to both the

plaintiff and the defendants requires that if possible there be no disagreement necessitating a retrial with all the attendant expense and delay.

You are particularly cautioned against allowing yourselves to be influenced by prejudice or anything other than the evidence and the instructions. Your attention is again directed to Instruction Nos. 1, 12 and 13 in regard to your duties.

No. 2

The issues in this case are simple and few. You are instructed that it is uncontradicted that the members of Local 16 engaged in a concerted refusal in the course of their employment to transport or otherwise handle or work on lumber of plaintiff or to perform any services for plaintiff and that this was for the purpose of forcing and requiring the plaintiff to assign the work of loading its barges with its lumber to members of Local 16 rather than to other persons to whom said work had theretofore been assigned.

The only issues, therefore, which remain for your consideration are whether damages proximately resulted from such concerted refusal and whether the International engaged in this concerted refusal to transport or otherwise handle or work on lumber of plaintiff or to perform any services for plaintiff. Whether it did so engage depends on what its officers and agents did. If you find that the International, acting through its officers and agents, induced Local 16 or any other of its Locals to en-

gage in such concerted refusal, the International would be equally liable.

No. 3

With reference to the liability of Local 16 and the International for the acts of its agents and whether their agents acted within the scope of their employment, you are further instructed that, if you find from a preponderance of the evidence that the agents of the defendants decided that the defendants, or either of them, should engage in a concerted refusal in the course of their employment to transport or otherwise handle or work on lumber of plaintiff or to perform any services for plaintiff and that thereafter Local 16 and International became engaged in such a refusal, this would constitute a ratification of the acts of their agents, and it would then be unnecessary to determine whether such acts of their agents were within the scope of their employment. In other words, labor organizations are liable not only for the acts of their officers or agents done within the scope of their authority or employment but also for the acts done outside of the scope of their authority and employment which they thereafter ratify.

Ratification takes place where the principal, with full knowledge of the acts of the officer or agent, approves or adopts such acts or accepts the benefits thereof.

In this case Local 16, by engaging in the concerted refusal aforesaid, ratified the previous acts

of its officers and agents and, hence, there is no issue for you to decide as to Local 16.

No. 4

In determining the scope of employment of the officers and agents of International you should consider all the evidence, oral and documentary, in order to ascertain the power and authority of International and its relationship to its Locals, and particularly whether it counsels, advises, intercedes on behalf of, or acts for its Locals or is obligated under its constitution to do so in labor disputes, whether its Locals or the International itself makes the decision to call a strike or engage in a concerted refusal such as the kind here dealt with, and whether thereafter the International calls or is empowered to call upon its Locals to join in such strike or concerted refusal to work, as well as all the other facts and circumstances in the case.

Upon determining the power and authority of the International in such matters, you will then be in a position to determine the scope of employment and authority of its officers and agents. Ordinarily the question whether a certain act is within the scope of employment of an agent of a labor union arises only where the act itself appears to be foreign to or bear but a slight relationship to the employment itself as where, for example, one engaged in picketing injures a person attempting to cross the picket line or damages property. Here the acts alleged are not of that kind. In determining the scope of authority and employment of officers and

agents of International you may consider whether their acts were related to the power and authority of International, the character of such employment, the nature of the act or acts alleged, particularly with reference to whether such act or acts are such as are usually done in labor disputes, and whether the act or acts were for the benefit or in the prosecution of the business of the International, remembering however that an act may be unlawful and still be within the scope of the employment or authority of the agent.

[Endorsed]: Filed District Court, Territory of Alaska, 1st Division, May 13, 1949.

[Endorsed]: No. 12527. United States Court of Appeals for the Ninth Circuit. International Longshoremen's & Warehousemen's Union, Appellant, vs. Juneau Spruce Corporation, a Corporation, Appellee. Supplemental Transcript of Record. Appeal from the District Court for the Territory of Alaska, Division Number One.

Filed July 29, 1950.

PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

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Vol. III

TRANSCRIPT OF RECORD

(Pages 1105 to 1147)

Supreme Court of the United States

OCTOBER TERM, 1951

No. 280

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION ET AL., PETITIONERS,

vs.

JUNEAU SPRUCE CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 27, 1951.

CERTIORARI GRANTED OCTOBER 22, 1951.

No. 12527

United States
Court of Appeals
For the Ninth Circuit

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION LOCAL 16,

Appellants,

vs.

JUNEAU SPRUCE CORPORATION, a Corporation,

Appellee.

In Three Volumes
Volume III
(Pages 1105 to 1146)

Appeal from the District Court for the Territory of Alaska Division Number One

Proceedings Had in the United States Court of Appeals for the Ninth Circuit

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday, January 19, 1951.

Before: Stephens, Bone and Pope,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. Allen Protsky, counsel for appellant, and by Messrs. Manley B. Strayer, and Mr. N. C. Banfield, counsel for appellee, and submitted to the court for consideration and decision with leave to counsel for respective parties to file further briefs in 5 days.

United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Saturday, May 5, 1951.

Before: Stephens, Bone and Pope,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT

Ordered that the typewritten opinion this day rendered by this court in above cause be forthwith

filed by the clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion rendered.

United States Court of Appeals
for the Ninth Circuit

No. 12,527

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION LOCAL 16,

Appellants,

vs.

JUNEAU SPRUCE CORPORATION, a Corporation,

Appellee.

Appeal from the District Court for the Territory of Alaska, Division Number One

May 5, 1951

Before: Stephens, Bone and Pope,
Circuit Judges.

Bone, Circuit Judge.

OPINION

Appellee and plaintiff below, Juneau Spruce Corporation, hereafter sometimes referred to as "Juneau," is a corporation organized under the laws

of the Territory of Alaska having its principal place of business at Juneau, Alaska. Appellant, International Longshoremen's and Warehousemen's Union (hereafter sometimes referred to as "International") and appellant, International Longshoremen's and Warehousemen's Union Local 16 (hereafter sometimes referred to as "Local 16") are labor organizations claimed by appellee to be within and subject to the provisions of the so-called Taft-Hartley Act. Local 16 is chartered by and affiliated with "International."

Appellee's complaint generally alleged and charged that the instant cause of action arose under the laws of the United States regulating commerce, more particularly under Section 303 of the Labor-Management Relations Act, 1947, commonly referred to as the Taft-Hartley Act.* It averred that appellee is an Alaska corporation in good standing; that International was a labor organization engaged in directing, representing, and acting for its members and local unions in the Territory of Alaska, in the Province of British Columbia, Dominion of Canada, and in various ports of the West Coast of the United States, that is in ports in the States of Washington, Oregon and California; that Local 16 was at all times material to the action, a labor organization chartered by and affiliated with International with its headquarters in the city of Juneau, Alaska, and engaged in representing its members in and about that city; that at all times material to

*Referred to in this opinion as "the Act."

the action appellee conducted lumber manufacturing operations in places in Alaska; that logs owned and controlled by the company are manufactured into lumber products at appellee's inill in Juneau; that appellee maintains retail lumber yards in Juneau and Fairbanks in the Territory of Alaska at which yards it sells a portion of the lumber manufactured at its Juneau mill as well as other materials in commerce commonly sold in retail lumber yards, all of said other articles being purchased in the United States and transported to said lumber yards; that appellee sells the majority of the lumber and lumber products produced at its Juneau mill to customers in many states of the United States, shipping said lumber and lumber products so sold to said customers by water to West Coast ports in the United States and Canada and from said ports by railroad to its customers located as aforesaid; that appellee is unable to receive or ship products in the operation of its business except by water, in whole or in part; that the loading and unloading of appellee's barges at its mill in Juneau is an essential part of the manufacture and sale of appellee's lumber and lumber products.

Appellee's complaint further averred that at all times material to the action a labor organization, to wit, International Woodworkers of America, Local M-271, has at all times mentioned in the complaint represented and now represents all of appellee's employees at its mill and retail yard in Juneau except appellee's clerical and supervisory employees and that appellee has at all times mentioned in the

complaint recognized and bargained with said Local M-271 as such representative; that at all times mentioned in the complaint there has been and now is in effect a collective bargaining agreement between appellee and Local M-271 wherein appellee recognized the right of Local M-271 to bargain for appellee's employees at its Juneau operations; that on or about April 10, 1948, and until the time of filing the complaint defendant-appellants have unlawfully engaged in and induced and encouraged appellee's employees at Juneau, Alaska, and employees of other employers, to engage in a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities of appellee, or to perform any services for appellee.

Appellee's complaint further averred generally that an object of appellants in their activities above noted has been, and is, to force and require appellee to assign the work of loading its barges with its lumber to members of Local 16 rather than to other persons including members of Local M-271 to whom said work had theretofore been assigned; that neither of appellants herein has been certified by the National Labor Relations Board as the bargaining representative for employees performing such work.

Appellee's complaint further averred that as a direct and proximate result of the picketing and coercive statements of appellants and of the communication of the fact of said picketing to other

labor organizations in ports of the United States and Canada, and elsewhere, all of which activities have been carried on since April 10, 1948, and are now continuously carried on, appellee's employees at its Juneau mill refused to work for a long period of time and appellee was forced to close said mill as a result thereof; that sufficient employees returned to work on or about July 18, 1948, to enable appellee to operate said mill until October 11, 1948, but at greatly increased cost to appellee; that because of the activities of appellants aforesaid, appellee has been unable to ship its lumber from its mill to customers, as a result of which appellee was again forced to close its mill on October 11, 1948; and that because of the said activities of appellants, appellee has been and is unable to transport materials to its retail yards in Alaska

The foregoing charges are followed by an allegation that appellee was damaged by appellants' said activities in the sum of $1,025,000 and appellee has been forced to employ attorneys for the maintenance and prosecution of this action and will incur fees for services in a minimum reasonable amount of $10,000. The prayer of the complaint is for recovery of these sums and for appellee's costs and disbursements in the action.

Appellants entered general denials of the material averments of appellee's complaint and set up certain affirmative defenses. Local 16 admitted that appellee is engaged in commerce within the meaning of Section 2, subsections 6 and 7 of the Act and

that Local 16 is a labor organization within the meaning of Section 2, subsection 5 of the Act.

As an affirmative defense Local 16 alleged that ever since appellee commenced its operations, it has been and now is a party to a collective bargaining agreement which Local 16 had with all employers engaged in business along the waterfront in Juneau, Alaska, such employers being commonly known as "The Waterfront Employers' Association of Juneau, Alaska"; that said collective bargaining agreement provided that said waterfront employers agreed to hire for longshore work members of Local 16, and that under and by virtue of said agreement members of Local 16 have been "employees" of appellee since appellee commenced business operations; that on or about October 23, 1947, with the full knowledge and acquiescence and consent of Local M-271, appellant, Local 16, then and subsequently asserted to appellee that it would picket the operation of appellee at its Juneau mill because appellee was violating the contract Local 16 had with the said Waterfront Employers' Association of Juneau, Alaska, unless appellee agreed to abide by said contract and reduce the terms thereof to writing; that on April 10, 1948, Local 16 engaged and continued in peacefully picketing the operations of appellee at its mill in Juneau, Alaska, through 1948 to induce appellee to comply with the contract between Local 16 and the said Waterfront Employers' Association of Juneau.

By way of reply to the affirmative defense above referred to appellee specifically denied that Local

16 had been or was a party to the collective bargaining agreement with all employers engaged in business along the waterfront in Juneau and further denied that members of Local 16 have been employees of appellee by virtue of said agreement. Appellee further denied that it was or had been a party to the collective bargaining agreement asserted by Local 16 to exist between Local 16 and the said Waterfront Employers' Association of Juneau, Alaska. Other denials by appellee put in issue all of the materia' allegations set forth in the affirmative defense of Local 16.

Evidence (partly undisputed) was presented to the jury from which it could properly infer and conclude that the following facts relating to the dispute between the parties had been established as true. Early in 1947 appellee purchased from Juneau Lumber Mills, Inc., certain of the physical assets belonging to the latter company, including a sawmill at Juneau, Alaska. Appellee commenced operations at the purchased sawmill property in May of that year. Appellee's principal sale of lumber was to the Army Engineers who took delivery of the lumber at appellee's dock. In September, 1947, the Army Engineers cancelled their purchase contract. Appellee sought a new outlet for its products and acquired certain barges (the loading work of which is here in dispute) for use in shipping lumber to ports in the United States and Canada. The barges were also to serve as an auxiliary "storage space" for lumber. When it purchased the aforesaid mill assets the appellee

provided and prescribed in the purchase agreement that it did not assume any labor agreements made by the selling company.

Shortly after it commenced operations on the acquired property appellee negotiated with representatives of I.W.A. Local M-271 (a sawmill workers local union which was affiliated with its own international organization) and these negotiations culminated in a collective bargaining agreement with the said sawmill workers union, which agreement constituted the said millworkers union as the exclusive bargaining agent for all of appellee's mill employees except clerical and supervisory employees. The contract included the disputed work of loading the barges.

At or about the time the aforesaid negotitaions with Local M-271 were under way Local 16 requested appellee to negotiate with it in respect to certain work claimed by longshoremen which work was to include the loading of barges owned by appellee, but because appellee had bargained with Local M-271 and the resultant agreement had assigned the work of loading appellee's lumber barges to members of Local M-271, appellee refused to bargain with, and enter into any sort of a collective bargaining agreement with Local 16 or to make any agreement with Local 16 regarding the loading of appellee's lumber barges.

The first barge which was loaded (in October, 1947) by appellee's mill employees belonging to Local M-271 was unloaded at a terminal point without incident. For reasons not here involved appellee's mill was closed during the winter months of

1947-1948. In March of 1948 appellee reopened its Juneau mill operations and commenced loading operations on another barge. Members of Local 16 then called on appellee and demanded the work of loading such barges.

When appellee refused to accede to this demand Local 16, in April of 1948, picketed appellee's plant. In consequence appellee's employees with whom it then had a collective bargaining agreement refused to cross Local 16's picket line and the mill was forced to shut down. After unsuccessful efforts to bring an end to the picketing appellee finally succeeded in reopening the mill in July with a small crew but the picketing continued. International through Albright, its representative, branded the millworkers then working as "strikebreakers," and all the Canadian Locals of International were informed that appellee's products were "unfair," this information being publicized in an official newspaper published by International. Members of Local 16 refused to load appellee's products on commercial steamers. In August, 1948, a barge of lumber loaded by appellee's mill workers departed for Prince Rupert in Canada. Representatives of International and Local 16 were in Prince Rupert when the barge arrived and longshoremen in that port refused to unload the lumber, acting on orders from the headquarters of International in San Francisco. Appellee finally succeeded in getting this barge unloaded in Tacoma, but when a second barge was sent to that port the following month it was discovered that that port also was

"closed" and the barge was not unloaded until six months had elapsed. In consequence of these actions appellee was unable to market its lumber and it had accumulated lumber to a point where its storage space was exhausted at its mill and it was finally forced to close the Juneau sawmill in October, 1948. The mill was still closed at the time of trial.

In a trial before the lower court and a jury appellee recovered judgment against both appellants in the sum of $750,000, together with appellee's costs and disbursements to be taxed by the clerk of the court, including an attorney's fee of $10,000. This appeal followed. The judgment in the instant action recited that both of the appellants were unincorporated associations.

Appellants present their case under four specifications of error. At the outset we face appellants' contention that the District Court for the Territory of Alaska is not "a district court of the United States" within the meaning of Secion 303(b) of the Act,[1] and therefore it was without jurisdiction to entertain and proceed with a cause arising under the Act if it entertained (as it did) such a cause upon the theory and "misconception" that in so

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[1] "(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

doing it functioned as "a district court of the United States." The significance of this is to be found in the language of Section 301(b) (c) (d) which makes certain procedural provisions applicable to actions "in the district courts of the United States" and in "any court of the United States" but do not extend the same procedural techniques to any other court.[1a] This contention invites an inquiry into the extent and nature of the jurisdiction conferred upon that court by Congress when it established the court as a district court for the dis-

[1a] "Sec. 301(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and, in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

"(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization."

trict of Alaska, Title 48 U.S.C.A., Section 101. It is to be noted that the legislation creating the court vested in it "the jurisdicion of district courts of the United States * * * [and] * * * general jurisdiction in civil * * * causes * * *."

Appellants' position seems to be that the proper interpretation of Section 303(b) is that the words "subject to the limitations and provisions of Section 301 hereof" (see footnote 1) apply only to "district courts of the United States," and not to "any other court having jurisdiction of the parties." Since Title 28 U.S.C.A. (Chapter 5) does not designate the lower court as a district court of the United States, appellants appear to regard it as falling within the category of "any other court having jurisdiction of the parties" and contend that if it does come within the latter designation or category then it may not lawfully apply the provisions of Section 301 of the Act, but in any case under the Act it must, and can only, apply "local law," that is "Alaska law." Upon this premise it is urged that the lower court erred in adopting and applying the provisions of Section 301 of the Act which relate to matters of jurisdiction, service of process and agency. It is argued that these provisions of the Act run counter to the law, practice and procedures recognized and applied in the courts of Alaska, and the refusal of the court to adopt and rely upon Alaska rules as to all such matters prejudiced appellants to a degree requiring reversal of the judgment.

As related to the foregoing contention appellants

also take the position that under Alaska law the trial court could not acquire jurisdiction of a non-resident, unincorporated association (International) by service of process on its agent doing business in Alaska—also that under Alaska law an unincorporated association (which would include Local 16 as well as International) cannot be sued as an entity. The claimed error on the question of agency relates to certain instructions given by the court which appellants assert were based on Section 301(e) of the Act.

Assuming arguendo that the provisions of Section 301 of the Act are applicable only in "district courts of the United States" our task is to determine whether the clearly disclosed theory and policy of the Act reflects an intention of Congress to include the Alaska court within the meaning of the term "district court of the United States" in order to effectuate the obvious purposes of the Act.

A fair reading of the Act in its entirety makes evident that its frequent and varied reference to federal courts lacks that exactness of expression normally employed by a legislature in utilizing words of art. The federal courts are referred to in a variety of ways and nowhere in the Act or in the Legislative History of the Labor Management Relations Act, 1947 (2 vols., published by the National Labor Relations Board), is there any indication that this variance was intended to have any controlling significance. We find in the legislative history a loose reference to federal courts which is strongly indicative of an intent to employ

these terms in the Act in a comprehensive rather than in a technical sense. Had the latter usage been intended it is a rational assumption that Congress would have employed terms identifying federal courts with a more marked degree of accuracy and precision.[2]

In attempting to determine what Congress intended by using the phrase "district court of the United States," our inquiry is not foreclosed by the fact that in other legislative enactments Congress used that phrase in a technical sense. Where legislation is of the sweeping character of that before us we should not construe that language apart from the full text of the Act. We regard it

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[2]A few examples of the use of confusing terminology in referring to federal courts further serve to exemplify the nature of our inquiry. One example is Section 301 of the Act (Title 29 U.S.C.A. Sec. 185, paragraphs (a), (b), (c) and (d). In paragraph (a) appears the following language: "in any district court of the United States having jurisdiction of the parties." In paragraph (b) appears the following language: "Any such labor organization may * * * be sued as an entity * * * in the courts of the United States." In paragraph (c) appears the following language; "for the purposes of actions and proceedings * * * against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization." The emphasized words convey a strong inference that any federal court denominated "a district court" would have jurisdiction for the purposes of actions and proceedings against labor organizations. In paragraph (d) appears the following language: "the service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent

as proper and necessary to interpret this phrase in light of the expressed purpose and policy of the Act.

The purpose of the Act is expressed in Section 1 of the Act. The aim of Congress was to prevent industrial strife which prevents the free flow of commerce. The second paragraph of this Section announces that the purpose and policy of the Act is to promote the full flow of commerce, to prescribe the legitimate rights of employers and employees in their relations affecting commerce, to provide orderly procedures for the prevention of interference with those rights, to protect the rights of individuals in their relations with labor organizations, to define and proscribe practices on the part

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of a labor organization, in his capacity as such, shall constitute service upon the labor organization."

As a further example of the varying designations employed in the Act we note that (including the Section (303) herein question) the phrase "district court of the United States" is used six times in the Act. (Sections 10(b), 208(a), 301(a), 301(b) and 301(c).) "District court of the United States (including the District Court of the United States for the District of Columbia)" is the court designated three times. (Sections 10(e), 10(j) and 10(l). An equal number of times Congress employed the words "courts of the United States." (Sections 11(4), 301(b), and 301(d). Once (Section 11(2) Congress used an all-inclusive description: "District Court of the United States or the United States courts of any Territory or possession, or the District Court of the United States for the District of Columbia." Lastly, in Section 302(e) Congress used all the above descriptions except one: "district courts of the United States and the United States courts of the Territories and possessions."

of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes which affect commerce. The term "commerce" as defined in the Act is not limited to commerce between the states, but includes the territories as well. The inclusive definitive terms employed in Section 101 of the Act are also highly significant as revealing and expressing a purpose to bring all phases of Labor Management disputes within the field of this legislation.

In the aggregate these declarations proclaim with imposing and compelling force a congressional intent and purpose to formulate an over-all legislative remedy which would reach and eliminate the costly and vexatious problems and social hardships which burden commerce and are incident to, and constantly arising out of, controversies in the entire labor-management field. To us these considerations also manifest a Congressional intent to define and prescribe the legitimate rights and duties of Alaska employers and employees in the field of relations affecting commerce, and to bring this area of possible employer-employee controversies within the ambit of the Act. The Territory of Alaska is rich in resources and its varied and extensive business activities give rise to problems in the labor-management field of the same character as those which arise in continental United States. Yet if we were to accept the implications which arise from the interpretation of the Act now urged upon us by the appellants, we would have to hold that the

rights of an Alaska employer (under Section 303 of the Act) while existing in theory, might, and probably would be, rights of a character incapable of real vindication or enforcement in any Alaska court for lack of an effective local enforcement remedy. One of appellants' arguments affords a ready illustration of this fact. They suggest that if "local law" of Alaska was applied to this case neither Local 16 nor International could be sued in the lower court for the reason that both appellants are unincorporated associations and, under local (territorial) law or the common law, such associations cannot be sued, as entities. Since practically all labor organizations are "unincorporated associations" the significance of this argument becomes apparent. If it is sound, appellee is without an effective remedy under the cause of action asserted in its complaint.

As a way out of this dilemma for the appellee-employer appellants suggest that International might be sued by appellee in "a district court of the United States" at some point in continental United States where service of process upon its representatives might be effected. But ignoring for the moment the inconvenience attending such a move it would still leave appellee without a forum in which it could effectively maintain an action against Local 16.

Regardless, however, of the status of Alaska "local law" we cannot bring ourselves to believe that Congress framed the provisions of the Act so as to create a right of action under Section 303 but

deliberately denied application of the important provisions of Section 301 in the event a cause of action was asserted in the Alaska court. The complexities (and the lack of any general rule of application) of "local law" and common law principles in relation to suits against unincorporated associations such as labor unions presented one of the serious problems receiving attention and consideration at the hands of Congress, as is clearly indicated in committee reports. See Senate Report No. 105 (by Senator Taft), Legislative History of the Labor-Management Relations Act, Vol. 1, pp. 421, 422, 423. This contemplation of the law carries the conviction that Congress clearly intended the provisions of Section 301 to be applied by the "district court for the Territory of Alaska" in actions based upon the provisions of the Act.

It is certain that Congress adopted the Act with full knowledge that the only court in the entire Territory of Alaska which could possibly entertain and adjudicate a cause of action arising under the Act was the lower court—a federal court created by Congress and vested with the jurisdiction of district courts of the United States.[3] It is noteworthy that in referring to the right to sue a labor organization "as an entity," and to serve an "officer or agent of a labor organization," Section 301, subdivisions (b) and (d) provide for such procedures in a "court of the United States." Even if this court were not "a district court of the United

[3]Title 48, Section 101.

States," it is unquestionably, and under any test, "a court of the United States."

No plausible or acceptable reason has been suggested to us as a basis for the conclusion that Congress intended to create the strange geographical hiatus in the law that acceptance of appellants' construction of the Act would produce. To adopt such a conclusion would require a construction of its terms so strict and narrow as to evince disregard of the dominating reasons assigned by Congress for its enactment. In short, it would mean that, for most purposes, the law was a dead letter in Alaska. Upon at least two occasions the Supreme Court refused to construe the literal language of statutes in a manner which would disregard and thereby frustrate the obvious purpose and policy of the legislation involved and produce unreasonable or absurd results.[4] We adopt the rationale of the rule applied in these cases.

The spirit, tenor and purport of the Act also

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[4]United States v. American Trucking Assns., 310 U.S. 534, 543-4.

"There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed

convinces us that Congress intended to bring all aspects of labor-management relations in Alaska which affect commerce within the ambit of the Act. We are persuaded that the lower court had jurisdiction to entertain and adjudicate the instant cause and to apply the provisions of Section 301.

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that purpose, rather than the literal words. When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.' The interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function. This duty requires one body of public servants, the judges, to construe the meaning of what another body, the legislators, has said. Obviously there is danger that the courts' conclusion as to legislative purpose will be unconsciously influenced by the judges' own views or by factors not considered by the enacting body. A lively appreciation of the danger is the best assurance of escape from its threat but hardly justifies an acceptance of a literal interpretation dogma which withholds from the courts available information for reaching a correct conclusion. Emphasis should be laid, too, upon the necessity for appraisal of the purposes as a whole of Congress in analyzing the meaning of clauses or sections of general acts. A few words of general connotation appearing in the text of statutes should not be given a wide meaning, contrary to a settled policy, 'excepting as a different purpose is plainly shown.'"

Talbot v. Silver Bow County, 139 U.S. 438, 441, 442, 443.

"In this section no express reference is made to Territories; States only are mentioned. Tested by the letter, the argument is short and clear. Congressional permission is essential; no permission is given to the Territories; therefore, Territorial taxation is unauthorized and void. Whatever may be

We further hold that Congress intended the language of Section 303 (which refers to district courts of the United States) to embrace and include "the district court for the Territory of

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the voice of the letter, the argument fails because the minor premise cannot be sustained. Can it be that Congress meant to give power to the States to tax, and to withhold that power from the Territories? Some plausible reason should be suggested before the intention is imputed to Congress of granting to an independent jurisdiction, such as a State, the power to tax one of its own instrumentalities, and at the same time withholding a like power from a political organization like that of a Territory wholly dependent upon Congress, and subject to its absolute supervision and control. Such is not the ordinary lesson of experience. If the matter in respect to which such an intent was imputed were wholly of interest to the States, or designed purely for the exercise of powers within the States, then properly all general expressions in the statute might be limited to States, and the intent of Congress be supported and established by the character of the subject-matter of the legislation. The converse of this is true. The national banking system was national in its design, coextensive in its operation with the territorial limits of the United States, and intended to be the banking system for the whole country, Territories as well as States. * * *

"These various provisions, scattered through the entire body of the statute respecting national banks, emphasize that which the character of the system implies—an intent to create a national banking system coextensive with the territorial limits of the United States, and with uniform operation within those limits, to establish everywhere throughout the United States banks with the security which a national examination gives, and furnish a currency of uniform value, the same in Arizona as in New

Alaska." And in this connection we are generally in accord with the opinion expressed by the trial court on the subject of the jurisdiction of that court as related to the issues in this case.[5]

The provisions of Section 301 of the Act being applicable to this action, the trial court correctly determined the issues raised in regard to the jurisdiction of the court over the defendants and in regard to the type of service of process authorized

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York, in Territory as in State. Given a system of such national character, and such uniform and uniform and universal operation through the entire territorial limits of the country, before any particular section of the statute creating it shall be tortured into creating a discrimination and difference in privileges and burdens by reason of locality, its language must imperatively demand such construction."

And see the reasoning in such cases as The Maret, 145 F. 2d 431, 436, Note 28; Andres v. United States, 333 U.S. 740, 745; Stainback, Governor, et al., v. Mo Hock Ke Lok Po, etc., 336 U.S. 368, 378, 379.

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[5]Congress had the power to confer, and did confer, "general jurisdiction" upon its creature, the district court of Alaska. In view of the plenary power of Congress to confer such jurisdiction upon an inferior court it creates, we think that as to the jurisdiction thus conferred, it is not necessary to consider (and decide) whether or not, strictly speaking, the lower court is a "constitutional" or a "legislative" court. See opinion by Judge Folta, 83 Fed. Supp. 224, where he discusses the status of the lower court and the issue of jurisdiction. See also Senate Document 232; 74th Congress, 2nd Session, page 547, published in 1938 under the title "Constitution of the United States of America."

by the Act. It is conceded that Vern Albright was an International representative and that he was engaged in acting for employee members. By virtue of Section 301(c) the court had jurisdiction of the International and by virtue of Section 301(d) the service of process on Vern Albright constituted service on the International. The agency question is treated later in this opinion.

Appellants' first assignment of error and the one we treat second herein is that a Board determination under Section 10(k) of the Act is a jurisdictional prerequisite to a civil action for damages under Section 303(a) (4). This contention is based on what appellants term the inter-relation between Sections 10(k), 8(b) (4) (D), and 303(a) (4) of the Act. Appellants' argument may be summarized as follows:

Whenever a charge is filed under Section 8(b) (4) (D) of the Act (jurisdictional dispute) the Board is required to hold a Section 10(k) hearing, and to determine therein who is entitled to the disputed work. This is a field in which the Board must employ its expert knowledge of labor-management relations based on such factors as history, tradition, etc. Therefore, it is urged, the only conduct which can violate Section 8(b) (4) (D) is conduct which occurs after a Board determination under Section 10(k) and which violates the Section 10(k) order. Since the language of Section 303(a) (4) is practically identical with that of Section 8(b) (4) (D), it follows that there can be no action for damages under the former Section until after

a Section 10(k) determination. To buttress this argument appellants suggest several incongruous results which might occur if the courts were to proceed with a private damage suit prior to action by the Board under Section 10(k). It is further urged by the appellants that the amended complaint in the instant case is fatally defective in that it fails to allege that a 10(k) determination adverse to appellants had been made, and that the court did not consider this omission as an essential element of appellee's cause of action. Therefore, whether it be considered a lack of jurisdiction, or failure to state a cause of action, the judgment is erroneous and should be reversed.

We do not agree. No such limitation appears expressly in Section 303(a) (4). Section 10(k) provides that whenever an unfair labor practice charge is filed under Section 8(b) (4) (D) the Board is "empowered and directed to hear and determine the dispute * * *." There is no reference in Section 10(k) to Section 303(a) (4). The argument of appellants rests primarily on identical language of Section 8(b) (4) (D) and Section 303(a) (4) and on the fact that a special procedure is set out in the Act for determining jurisdictional disputes.

The difficulty with the position of the appellants is that it is inconsistent with the plain language of Section 303(a) (4). That Section provides:

> "Section 303. (a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or en-

courage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

"(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act."

As we view this Section of the Act, a plaintiff, to maintain an action for damages, is required to show that a labor organization has engaged in or induced the employees of any employer to engage in a strike, etc., and that an object of such conduct was to force or require any employer to assign par-

ticular work to employees in a particular labor organization or group rather than to employees in another group; and further that the employer is not failing to conform to a Board order or certification determining the bargaining representative for employees performing such work. All of these requirements were adequately pleaded and proved in the instant case.

Whether any of the incongruous results that appellants suggest would result from a court action prior to a Section 10(k) hearing depends to a large extent on the scope of the Board's determination under this Section. Appellants claim that the Board must decide (on the basis of past practice, tradition, etc.) what organization is entitled to the work. Appellee claims that the Board performs a purely ministerial function, and, once the employer has made an assignment, the Board cannot change it. A third possibility that has been suggested is that the Board is not required to hold a Section 10(k) hearing in every case where a charge is filed under Section 8(b) (4) (D), but should do so only when the dispute is one which was contemplated by this Section as originally proposed, i.e., a dispute between two labor organizations where the employer is strictly neutral.[6]

Our attention has been called to several decisions of the Board. The Board has taken the position

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[6]This was the position taken by two dissenting members of the Board in Moore Drydock Co., 81 NLRB 1138, and in Juneau Spruce Corp., 82 NLRB 650. Section 8(b) (4) (D) as originally introduced

that when a prima facie case of a violation of Section 8(b) (4) (D) appears the Board is required to hold a Section 10(k) hearing.[7] However, the Board, with one exception, has not attempted to change an assignment made by the employer. The exception noted is the case of Winslow Bros. & Smith Co., 90 NLRB No. 188. In that case the dispute was between two unions and the employer had several times bowed to the demands of each union, assigning the work first to one and then to the other. He was in doubt about which union's contract covered the work and took a position of neutrality in the hearing before the Board. In all other cases where the employer has made an assignment the Board has upheld his right to do so. In Juneau Spruce Corp., supra, the Board said:

> "As we read Sections 8(b) (4) (D) and 10(k), these Sections do not deprive an employer of the right to assign work to his own employees; nor were they intended to interfere with an employer's freedom to hire, subject

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referred only to disputes between labor organizations and did not contain the language relating to an assignment by the employer. Section 10(k) remained unchanged during its legislative course except in one respect not material here. The end result is that Section 10(k) indicates that the Board should decide who is entitled to the work while Section 8(b) (4) (D) indicates that the employer has the right to assign the work.

[7] Moore Drydock Co., 81 NLRB 1108; Juneau Spruce Corp., 82 NLRB 650. See also Herzog v. Parsons, 181 F. 2d 781.

only to the requirement against discrimination as contained in Section 8(a) (3)."[8].

The instant case presents an entirely different picture than the Winslow case, supra. Appellee is not in the position of an employer standing neutral in a dispute between two unions. Appellee purchased the assets only of its predecessor and in the purchase transaction specifically provided that it was not assuming any labor contracts. A contract was negotiated with the Woodworkers Union and it was understood that the contract covered the now disputed work of loading the barges. On several occasions members of Local 16 were used to load vessels of customers of appellee, but were never used to load the barges of appellee. Appellee has always insisted that the work be done by the Woodworkers Union, even in face of the fact that that organization was at one time willing to surrender the work to appellants. Far from being neutral, appellee has consistently maintained the position that the Woodworkers' contract be lived

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[8]See also the decisions of the Board in United Brotherhood of Carpenters and Joiners of America, et al. (Stroh Brewery Co.) 88 NLRB No. 169; United Brotherhood of Carpenters and Joiners of America, AFL, et al. (New London Mills, Inc.) 91 NLRB No. 86; Truck Drivers and Chauffeurs Union, etc. (Direct Transit Lines, Inc.) Case No. 13-CD-13, decided January 30, 1951. In the Direct Transit Lines case the Board said:

"* * *. Consequently, in determining this dispute, it is sufficient on the facts before us that the Company assigned the work to its own employees and that Local 705 acted to force or require the Company to assign this work to their own members."

up to. Appellee is not failing to conform to a Board order or certification. In view of these circumstances and under the plain language of Section 8(b) (4) (D) we are unable to see how the Board in a Section 10(k) proceeding could make a determination adverse to the assignment of the work by appellee.

Turning now to Section 303 the legislative history of that Section discloses that it was offered in the Senate as a substitute for an amendment offered by Senator Ball. The discussion attending Senate action on these two proposed amendments indicates that the purpose was to provide some means of direct action by an employer without waiting for, or resorting to, administrative proceedings. Nowhere in the legislative history do we find any indication of an intent to have such civil actions for damages await the outcome of proceedings of the NLRB. The plain purpose was to provide direct court action by the injured party as a further deterrent against engaging in the prohibited conduct.[9]

Neither the legislative history nor the plain language of Section 303(a) (4) sustain appellants' position. The complaint in the instant case was drawn substantially in the language of that Section. We hold that a Section 10(k) determination is not a jurisdictional prerequisite to maintaining the instant cause of action.

The third assignment of error relates to the

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[9]Legislative History of the Labor Management Relations Act, Vol. 2, pp. 1323-1400.

court's instructions to the jury and to appellants' proposed instructions which were refused. Appellants' first claimed error is in regard to the court's instruction No. 4. It is asserted that the trial court embodied in that instruction the language of Section 301(e) of the Act which section appellants contend is not applicable in the instant case. Since we have heretofore decided this question adversely to appellants' theory no further discussion of this point is necessary.[10]

The next alleged error is in regard to instructions 6 and 7. These instructions are set out in the margin.[11]

It is contended by appellants that before either appellant could be held liable the evidence must establish that its agents engaged in the proscribed

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[10]Appellants point out that instruction 4 referred to Albright and Barry as officers rather than employees. We hardly see how this could be prejudicial as they were in fact agents and the trial court referred to them as officers only as a step to classifying them as agents.

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[11]No. 6.

"If you find from a preponderance of the evidence that during the period stated the defendants, acting separately or jointly, engaged in or induced or encouraged plaintiff's employees at Juneau, Alaska, to engage in, a concerted refusal in the course of their employment to manufacture, process, transport or otherwise handle or work on any lumber, or to perform any services for the plaintiff, and that the object thereof was to force or require the plaintiff to assign the work of loading its barges with its lumber to members of Local 16 rather than to other persons to whom such work had been assigned, and that such acts directly and proximately

activity and that it was bound by the acts of its agents. It is asserted that instructions 6 and 7 allowed the jury to consider a basis for International's liability on a much broader ground than the agency theory of liability; that the jury was permitted to find International liable for the actions of Albright (an International representative) without regard to the scope of his authority, and that the combined effect of instructions 6 and 7 was to

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caused pecuniary loss to the plaintiff, your verdict should be for the plaintiff in such amount as you find it has been damaged, not exceeding in any event the amount sued for. On the other hand, if you do not so find, your verdict should be for the defendants.

"In this connection you are instructed that, if you find from a preponderance of the evidence that the defendants, through their officers or agents acting within the scope of their employment, entered into a conspiracy or understanding to commit the aforesaid acts or any of them for the object or purpose stated, or acted jointly or in pursuance of a common purpose or design, then from the time of entering into such a conspiracy or understanding everything that was done, said or written by any of the officers or agents of either in furtherance of such conspiracy or understanding and to effect the object or purpose thereof, regardless of whether done, said or written in Alaska or elsewhere, is binding on both of the defendants just as though they themselves, through their officers or agents, had done such acts or made such statements, and if the object of the conspiracy was accomplished, resulting in damage, each is liable for the whole thereof regardless of the degree of participation in the commission of the acts charged, or any of them.

"A conspiracy, common purpose or design may be proved by direct evidence or by proof of such circumstances as naturally tend to prove it and which are sufficient in themselves to satisfy an

nullify the agency principles set out in instruction No. 4. We do not so read the instructions.

Instruction 6 permitted the jury to find that if appellants entered into a conspiracy or understanding to commit the acts complained of in the complaint, then either of appellants could be liable for the whole of the resultant injury regardless of which of the appellants (acting through their agents) actually performed the acts in furtherance of the conspiracy. The instruction permitted the jury to determine whether the agents of the defendants, acting within the scope of their authority, did enter into the conspiracy or understanding to com-

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ordinary prudent person of the existence thereof. Therefore, it is not necessary that such a combination or understanding be shown to be in writing. It is sufficient if the evidence shows a combination of or cooperation between two or more persons to accomplish a common purpose.

"On the other hand, if you find that the defendants did not act in concert or in pursuance of a common purpose or design, you will consider the case against each defendant separately, and you may find either or both or neither of them liable." No. 7.

"You are instructed that two or more persons or organizations may participate in a wrong although they do so in different ways, at different times and in unequal proportions. One may plan and the other may be the actual instrument in accomplishing the mischief, but the legal blame will rest upon both as joint actors. Accordingly, one who directs, advises, encourages, procures, instigates, promotes, aids or abets a wrongful act by another is as responsible therefor as the one who commits the act, so as to impose liability upon such person to the same extent as if he had performed the act himself."

mit the acts complained of. The effect of this instruction was that either of appellants could be held liable only if their agents acted within the scope of their authority. Nor was there error in the use of the word conspiracy. Conspiracy was not the gravamen of the charged offense and it was not necessary to allege it in the complaint. Instructions 6 and 7 were based on the well-established principle of tort law that where two persons act in concert to commit a wrong each is liable for the entire injury resulting therefrom and that one who abets a wrongful act is equally liable with the perpetrator.[12] There was sufficient evidence before the court of such an understanding between Local 16 and International on which to submit the matter to the jury for its determination.

Appellants also assign as error certain supplemental instructions given by the trial court. The first of these is that a verdict was directed against Local 16 save and except for the question of damages. The evidence leaves no doubt that Local 16 actually engaged in the proscribed activity for the purpose alleged in appellee's complaint, and a directed verdict against it was proper.[12½]

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[12]Restatement of Torts, Sec. 876(a); Cooley on Torts, 4th Edition, Vol. 1, Secs. 74 and 85; See also International Electrical Workers Local 501, et al., v. NLRB, 181 F 2d 34, at p. 38.

[12½]In our view the evidence in this case fully justified the trial court in directing the verdict against Local 16 except as to the amount of damages. It also leaves no doubt of the active participation of Albright (who was concededly an

We have examined all of the other claims of errors in the court's instructions and supplemental instructions and find them to be without merit. The jurors were instructed to consider the instructions as a whole, and so considered, the instructions were correct.

Appellants requested the court to give certain instructions which would have set out the policy of the Labor Management Relations Act in respect to settlement of labor disputes. These, appellants assert, would allow the jury to consider appellee's "uncompromising attitude" in regard to negotiating a settlement this as a defense by appellants

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employee of International) in the unlawful activity engaged in by Local 16. The only question remaining as to International's liability with respect to the conduct of Albright is whether the latter was acting in the premises as an agent of and for and on behalf of International, or solely on behalf of and as an agent of Local 16. Whether Albright was or was not acting within the scope of his employment as an employee (agent) of International (the evidence on this point being in direct conflict) tendered an issue properly submitted to the jury under correct instructions. The contention of appellee that Albright was also acting on behalf of International finds support in evidence which the jury could have accepted as fully establishing that International was here participating in the activities of Local 16 because it was very much concerned with the problem of preventing appellee from using the services of regular mill employees to load its own barges and was seeking to prevent such a practice from becoming a "precedent" which might be adopted by like employers in other Pacific Coast ports located within the jurisdiction of International.

or in mitigation of damages. This contention assumes that appellee had a duty to bargain with appellants in an effort to reach a settlement. Such is not the case. Appellee, who had a contract with the International Woodworkers of America covering the same work, was under no duty to bargain with appellant with respect to such work nor bow to appellants' demands in order to minimize its damages. The instructions were properly refused.

The next claimed error is the failure of the trial court to comply with appellants' request that the provisions of Section 8(c) of the Act be embodied in an instruction to the jury.[13] The cases dealing with this question have held that conduct which violates Section 8(b) (4) of the Act is not conduct protected by Section 8(c).[14] But we need not reach

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[13] "Sec. 8(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

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[14] These decisions rest on a variety of grounds. See Printing Specialties and Paper Convertor Union Local 388, AFL, et al., v. LeBaron, 171 F. 2d 331; LeBaron v. Los Angeles Building and Construction Trades Council, et al., 84 Fed. Supp. 629, affirmed per curiam, 185 F. 2d 405; United Brotherhood of Carpenters and Joiners of America, et al., v. Sperry, 170 F. 2d 863; International Brotherhood of Electrical Workers, Local 501, et al., v. NLRB, 181 F. 2d 34; NLRB v. United Brotherhood of Carpenters and Joiners of America, et al., 184 F 2d 60. And see also discussion of this problem in 64 Harvard Law Review 781 at page 807.

that question here as appellants made no request for an instruction based on Section 8(c). Their request to embody the provisions of Section 8(c) in supplemental instructions 3 and 4 was properly refused. Those particular instructions dealt with questions concerning the law of agency and were correct. They have no relation to the type of conduct which would be protected by Section 8(c).

The next assignment of error relates to the alleged hearsay testimony of witness Schultz, a director of appellee corporation. Schultz testified that appellee conducted investigations to determine the possibility of getting its lumber unloaded at various ports in the United States and Canada; that these investigations revealed that the longshoremen in these various ports would not unload lumber coming from appellee's mill; that as a result of these investigations, and because there was no more room in the yard, appellee ceased operations at its mill. The testimony of Schultz revealed that the investigations were in part at least conducted by others and reported to the witness. These reports by others are the basis of the hearsay objection made at the trial and now urged as error on this appeal.

We are of the opinion that the testimony was competent. Schultz was testifying on the damages suffered by appellee as a result of appellants' conduct. It is conceded that appellee had a duty to minimize its damages, or in other words, keep operating if it was reasonably possible to do so, and the purpose of this testimony was to show that appellee attempted to keep operating by investi-

gating all possible outlets for its lumber through Puget Sound ports and that the investigation revealed that no such outlets existed. Relying thereon, appellee ceased operations.

The results of the investigation were admissible, not as proof of the truth that the ports in question were in fact closed to appellee, but only to show that appellee, relying on such reports, acted in a reasonable manner in closing its mill. Appellee had a right to rely on reports made by responsible people whom it had asked and trusted to conduct such investigation. The truth or falsity of the reports is not in issue. The statements were competent and admissible.

The remaining assignments of error relate to appellants' Exhibit C, which is a contract between Local 16 and the Waterfront Employers Association of Juneau. By its instructions to the jury the court held as a matter of law that this agreement was not binding on appellee and refused to allow this exhibit to go to the jury except for the limited purpose of showing that such an agreement had existed between Local 16 and Juneau Lumber Mills prior to the time appellee purchased the mill assets from that concern. We think that this ruling was correct. Appellee had purchased only the physical assets of Juneau Lumber Mills and the purchase agreement specifically negated the assumption of any labor agreements. No evidence was offered that this purchase agreement was not made in good faith. The purchase of the assets of a corporation does not establish acceptance of a labor agreement

of the seller; Empire Case Goods Workers Union v. Empire Case Goods Company, 271 App. Div. 149, 63 NYS (2d) 35. The evidence is conclusive that at the time of the sale transaction between appellee and Juneau Lumber Mills the employees of the latter concern were notified by signs posted at the mill where they worked that their employment was terminated, and appellee posted notices that its office would be open within a day or two for signing up for employment the former employees of Juneau Lumber Mills. Sometime later appellee and the Woodworkers Union negotiated for and subsequently entered into a collective bargaining agreement in which the Woodworkers Union (Local M-271) was recognized as the exclusive bargaining agent for all of appellee's mill employees at Juneau. This agreement was dated November 3, 1947, and was in force at the times material to the issues in this case. It is true that members of Local 16 were hired by appellee subsequent to this time, but it was only on those certain occasions when a barge or vessel of a customer of appellee was to be loaded. Local 16 members were never hired to load appellee's barges. Such intermittent hiring does not raise a jury question on the implied assumption by appellee of a contract existing between Local 16 and the former owner of the purchased mill assets. The cases cited on this point by appellants are not relevant to the facts developed in the trial of the instant case.

From a review of the entire record we are persuaded that the case went to the jury under fair instructions and that the verdict of the jury finds

ample support in the facts properly admitted in evidence. The verdict should be and is affirmed.

[Endorsed]: Opinion. Filed May 5, 1951. Paul P. O'Brien, Clerk.

United States Court of Appeals
for the Ninth Circuit

No. 12527

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, et al.,
Appellants,

vs.

JUNEAU SPRUCE CORPORATION,
Appellee.

JUDGMENT

Appeal from the District Court for the Territory of Alaska, Division No. 1.

This Cause came on to be heard on the Transcript of the Record from the District Court for the Territory of Alaska, Division No. 1, and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is, affirmed.

Filed and entered May 5, 1951.

/s/ PAUL P. O'BRIEN,
Clerk.

United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday, June 8, 1951.

Before: Stephens, Bone and Pope,
Circuit Judges.

[Title of Cause.]

ORDER DENYING PETITION FOR REHEARING

Upon consideration thereof, and by direction of the Court, It Is Ordered that the petition of appellants, filed June 1, 1951, and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is, denied.

United States Court of Appeals
for the Ninth Circuit

CERTIFICATE OF CLERK, U. S. COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Court of Appeals for the Ninth Circuit, do hereby certify the foregoing three volumes consisting of 1145 pages, numbered from and including 1 to and including 1145, to be a full, true and correct copy of the entire record, excluding original exhibits, of the above-entitled case in the said Court of Appeals, made pursuant to request of counsel for the appellants, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 5th day of July, 1951.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 280

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 22, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

In the Supreme Court

OF THE

United States

Office-Supreme Court, U. S.
FILED
AUG 27 1951
CHARLES ELMORE CROPLEY
CLERK

OCTOBER TERM, 1951

No. 280

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION and INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, LOCAL 16,

Petitioners,

vs.

JUNEAU SPRUCE CORPORATION (a corporation),

Respondent.

PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

RICHARD GLADSTEIN,
240 Montgomery Street, San Francisco 4, California,
Counsel for Petitioners.

GLADSTEIN, ANDERSEN & LEONARD,
ALLAN BROTSKY,
240 Montgomery Street, San Francisco 4, California,
Of Counsel.

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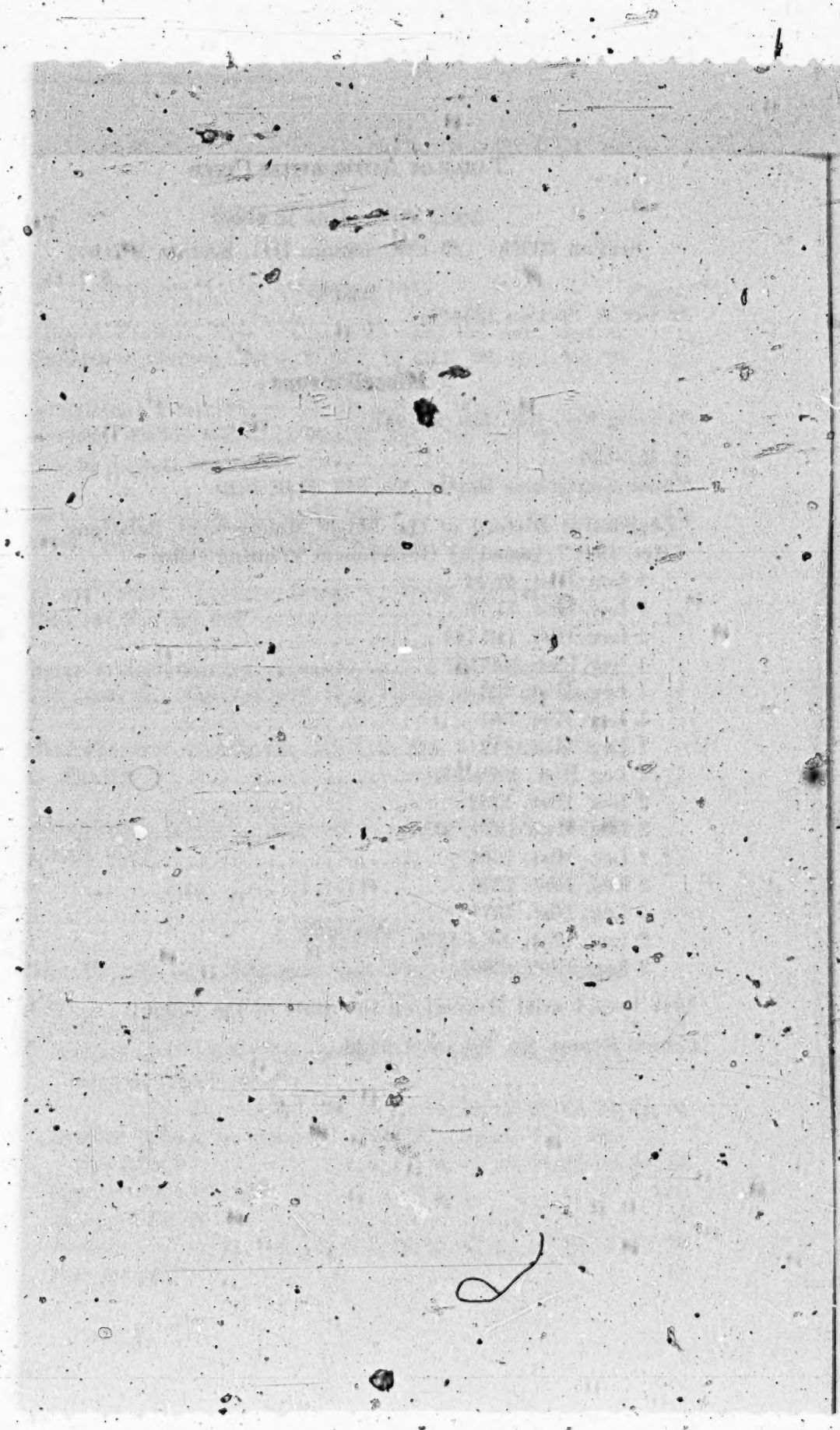
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1951

No.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION and INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, LOCAL 16,

Petitioners,

vs.

JUNEAU SPRUCE CORPORATION (a corporation),

Respondent.

PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Petitioners International Longshoremen's & Warehousemen's Union (hereafter called the "International") and International Longshoremen's & Warehousemen's Union, Local 16 (hereinafter called "Local 16") respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled cause on May 5, 1951, affirming the judgment of the District Court for the Territory of Alaska, Division No. 1, at Juneau (hereinafter sometimes referred to as the "trial court").

OPINIONS BELOW.

The opinion of the District Court for the Territory of Alaska, rendered in ruling upon demurrers and motions of petitioners, is reported at 83 F. Supp. 224. The opinion of the Court of Appeals (R. 1106) is reported at 189 F. (2d) 177.

JURISDICTION.

The judgment of the Court of Appeals was entered on May 5, 1951. (R. 1144.) The order of the Court of Appeals denying petitioners' timely petition for rehearing was entered on June 8, 1951. (R. 1145.)

The jurisdiction of this Court is invoked under 28 USCA §1254(1).

STATUTE INVOLVED.

This case involves what are commonly known as the "jurisdictional dispute" sections of the Labor Management Relations Act, 1947, often referred to as the Taft-Hartley Act, 61 Stat. 136, 29 USC (Supp. III) §151, et seq.[1]

Section 8(b)(4)(D) of the National Labor Relations Act, as amended, 29 USC (Supp. III) §158 (b)(4)(D), and Section 303(a)(4) of the Labor Management Relations Act, 1947, 29 USC (Supp. III) §187(a)(4), contain virtually identical provisions. For ease of reference and comparison, their language is set forth below in parallel columns, with the identical language in each section italicized.

[1]The Labor Management Relations Act, 1947, will sometimes be referred to herein as the "Act". Title 1 thereof, which is the National Labor Relations Act, as amended, will sometimes be referred to herein as the "Labor Relations Act".

Section 8(b)(4)(D)

"Sec. 8 * * *

"(b) It shall be an unfair labor practice for a labor organization or its agents * * *

* * * * *

"(4) *to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is*

* * * * *

"(D) *forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work*

* * *"

Section 303(a)(4)

"Sec. 303 * * *

"(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization *to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is* * * *

* * * * *

"(4) *forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the* National Labor Relations *Board determining the bargaining representative for employees performing such work*

* * *"

Section 10(k) of the National Labor Relations Act, as amended, 29 USC (Supp. III) §160(k), under which the National Labor Relations Board (hereinafter called the Board) determines which employees in a jurisdictional dispute are entitled to particular work, provides as follows:

"Whenever it is charged that any person has engaged in an unfair labor practice within the

meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed."

Section 303(b) of the Labor Management Relations Act, 1947, 29 USC (Supp. III) §187(b), provides as follows:

"Sec. 303 * * *

"(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

QUESTIONS PRESENTED.

(1) Whether activities of a labor organization for the object defined by Section 303(a)(4) of the Act[2]

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[2] "* * * forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another

are illegal under that Section, unless they occur after and in the face of a determination by the National Labor Relations Board, under Section 10(k) of the Labor Relations Act, that the employees represented by the labor organization are not entitled to the work in question.

(2) Whether the provisions of Section 8(b)(4)(D) of the Labor Relations Act and Section 303(a)(4) of the Act each proscribe the same conduct on the part of labor organizations; conversely, whether conduct which is not a violation of Section 8(b)(4)(D) of the Labor Relations Act is nevertheless illegal and actionable under Section 303(a)(4) of the Act.

(3) Whether a labor organization, whose claim that the employees it represents are entitled to perform particular work is upheld by the Board in a determination under Section 10(k), can nevertheless be sued for damages for primary activities directed at compelling the employer involved to abide by the Board's award.

STATEMENT OF THE CASE.

Respondent Juneau Spruce Corporation, plaintiff below, sued the International and Local 16, unincorporated trade unions, in the District Court of the Territory of Alaska for one million twenty-five thousand dollars ($1,025,000) in damages, basing its al-

labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work."

leged cause of action on the provisions of Sections 303(a)(4) and 303(b) of the Taft-Hartley Act.

The events out of which the alleged cause of action arose may be briefly summarized as follows:

The respondent came into existence as a corporation and began its lumber manufacturing operations in the spring of 1947, when it acquired the business of Juneau Lumber Mills, Inc. By contract with the latter corporation, the respondent purchased a sawmill and planing mill at Juneau, Alaska, logging equipment at Edna Bay, Alaska, retail yards at Juneau, Anchorage and Fairbanks, Alaska, together with all equipment used in those operations. (R. 113-118.) The operations of the respondent began on May 2, 1947, with the mill employees in Juneau consisting of those formerly employed by Juneau Lumber Mills, Inc. (R. 123, 228.)

At the time of the take-over, the respondent's predecessor was a party to a collective bargaining agreement with Local 16, whereby it had agreed to hire, and was hiring, longshoremen represented by that labor organization to perform all longshore work in connection with its operations. (Def. Exh. C; R. 918-919.) In practice, the work performed under that contract consisted of the loading of lumber aboard the tugs or boats of purchasers at the company's docks in Juneau. (R. 170-171, 232.) For this work the longshoremen were paid by the respondent's predecessor. Lumber which was shipped by commercial steamer was also loaded aboard ship by longshoremen represented by Local 16, who in those instances were

employed directly by the steamship companies. (R. 155.)

These kinds of shipment accounted for but a small proportion of the predecessor's production at the time of the take-over, the greater proportion of production at that time going to the United States Army Engineers, which used its own personnel to pick up its lumber at the company dock. (R. 154-155, 183.) Until September, 1947, the situation with respect to the disposition of production remained the same for respondent as it had for its predecessor. Respondent continued to use longshoremen for the work covered under its predecessor's contract with Local 16 (R. 174-175, 933); the bulk of its production continued to go to the Army Engineers.

In September, 1947, respondent's contract with the Army Engineers was cancelled. (R. 183.) In anticipation of this, and of the necessity for it to dispose of most of its lumber elsewhere, the respondent had leased sea-going barges, to be used in shipping the bulk of its lumber to the United States. (R. 187.) That portion which the respondent had theretofore been shipping to the United States had gone by commercial steamer (R. 157), following the practice of respondent's predecessor, which had never employed its own sea-going barges for that purpose. (R. 982.)

In October, 1947, instead of using longshoremen for the work, the respondent employed its mill employees to place the first load of lumber on this sea-going barge. (R. 185-187.) These employees had never

before loaded lumber aboard sea-going craft for shipment to the United States. (R. 982.) Immediately after the barge was loaded (R. 185), a committee of Local 16 visited the respondent, to request that the longshoremen it represented be given the barge-loading work. (R. 188.) The respondent rejected this request. (R. 189.) A second barge was loaded in the same manner in March, 1948.[3] (R. 202.) Promptly thereafter a delegation from Local 16 appeared before a membership meeting of the International Woodworkers of America, Local M-271 (hereinafter called "Local M-271"), which represented the mill employees under a collective bargaining agreement with the respondent. Their position that longshoremen, rather than the mill employees whom Local M-271 represented, were entitled to perform the work of loading the sea-going barges was explained to those in attendance. (R. 832-836.) After the longshoremen's delegation had left, the Local M-271 meeting voted unanimously as follows:

> "Motion moved and seconded to go on record to not load barges. We figure this work belongs to the longshoremen." (Def. Exh. A; R. 838-839.)

Within the following week, a delegation consisting of representatives of Local M-271 and Local 16 informed Eugene S. Hawkins, Vice-President and General Manager of respondent, that Local M-271 had agreed that the work of loading the barges belonged to the longshoremen. Hawkins was further informed

[3]Such a diversion of work from the Juneau longshoremen caused a reduction of one-third in their income. (R. 621.)

that the members of Local M-271 would honor the picket line which Local 16 intended to place before respondent's mill if the latter persisted in its refusal to permit longshoremen represented by Local 16 to perform the work of loading the barges. (R. 203-206.) Even though the company's cost of operations would not have been materially affected by acceding to the joint request of the two locals (R. 252-253, 256-257, 266), and the respondent had earlier informed the longshoremen that it would accept such an agreement between them (R. 182), the respondent insisted that the work be done by Local M-271. (R. 261.)

A day or two later, on April 9, 1948, Local M-271 called a meeting which was attended by the overwhelming majority of the mill employees (R. 383, 404, 840), again to discuss the question of the longshoremen's right to perform the barge-loading work and Local M-271's position with respect to the impending picket line. The minutes of the previous meeting recognizing the longshoremen's right to perform the work were read and approved and a general discussion ensued. (R. 841.) Those in attendance resolved unanimously to honor Local 16's picket line if it was established. The official minutes of the meeting read as follows:

> "Special meeting, April 9, 1948. Discussion on Conditions Relative to ILWU loading barges. Move made and seconded to take vote on whether to cross picket line—again a unanimous vote to honor picket line of ILWU." (Def. Exh. A; R. 842.)

The following morning Local 16 established a peaceful picket line at the respondent's mill, and the mill employees honored it in accordance with their resolution passed the previous evening. (R. 843.)

On April 10, 1948, the respondent filed an unfair labor practice charge (the disposition of which is discussed hereafter) with the National Labor Relations Board, alleging that Local 16 was violating Section 8(b)(4)(D) of the Labor Relations Act. From April 10 to July 19, 1948, respondent's mill was closed. (R. 310.) During that entire period the respondent refused to negotiate with the unions concerning a settlement of the dispute on terms agreeable to both unions. (R. 781, 891. 991, 1027.) On the contrary, it insisted that Local M-271 perform the work of barge-loading, although that organization continued to maintain that the longshoremen represented by Local 16 were entitled to the work. (R. 323-325.) In May (R. 453) respondent telephoned from its office in Portland to the President of Local M-271 and asked him to come to that city to see the officers and counsel for his International union. Respondent paid the expenses of the trip. (R. 534-535.) After the return of its President from Portland, Local M-271 entered into an agreement with respondent in which that Local agreed:

> "* * * to cross the picket line established by Local 16, ILWU, and claim jurisdiction of all work performed by employees of the Juneau Spruce Corporation according to our contract, also the loading of company-owned or leased barges with company-owned gear * * *" (Pl. Exh. 7.)

The agreement represented the first claim by Local M-271 to the work in dispute and was followed by the resumption of operations on July 19, 1948, although the peaceful picketing of Local 16 continued. (R. 439-440.) Thereafter, another barge was loaded with lumber by mill employees and was shipped from the mill at Juneau to Prince Rupert, British Columbia, on August 27, 1948. The longshoremen at that port refused to unload the barge because of the existence of the dispute between Local 16 and the respondent. (Pl. Exh. 12; R. 619.) The barge was rerouted to Tacoma, Washington, where it was unloaded. (R. 687, 788.) On October 11, 1948, the manufacturing operations at the mill ceased again, through the lack of storage capacity at respondent's mill caused by its inability to have its lumber unloaded at Puget Sound ports. (R. 440, 692-696.) It remained closed until the trial of the action began on April 27, 1949. (R. 411.)

The unfair labor practice charge which the respondent had filed on April 10, 1948, was investigated by the Regional Director of the 19th Region of the Board and dismissed by him, on the ground that no jurisdictional dispute existed within the meaning of Section 8(b)(4)(D), by virtue of his finding that Local M-271 had relinquished its claim to the jobs in question by respecting the picket line of Local 16. This dismissal was appealed by the respondent, and upheld by the Acting General Counsel of the Board on August 4, 1948. A new charge alleging a violation by Local 16 of Section 8(b)(4)(D), based on the resumption of work by the mill employees represented

by Local M-271, was filed by the respondent on August 3, 1948. Pursuant to the provisions of Section 10(k) of the Labor Relations Act, the Board directed a hearing on the question of which employees were entitled to the disputed work. That hearing resulted in a Board determination on April 1, 1949, that the longshoremen represented by Local 16 were not entitled to the barge-loading work.[4] On May 9, 1949, following this adverse determination by the Board, Local 16 discontinued its picketing.[5]

After a trial before a jury, judgment was entered against both petitioners in the sum of $750,000, plus costs and disbursements, including an attorney's fee of $10,000. (R. 73-74.) The trial court permitted damages to be assessed for the picketing which occurred during the period from April 10, 1948, to April 1, 1949. On appeal, the basic question which the Court of Appeals was called upon to decide was whether the picketing of Local 16 during this period, which preceded the Board's determination on April 1, 1949, that the longshoremen represented by Local 16 were not entitled to the disputed work, was actionable under Section 303(a)(4). Petitioners contended[6] that Section 303(a)(4), like Section 8(b)(4)(D), rendered illegal only such picketing by a labor organization as

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[4] *Juneau Spruce Corp.*, 82 NLRB 650.

[5] *Juneau Spruce Corp.*, 90 NLRB No. 233, n. 5.

[6] Relying on the identity of language in Section 303(a)(4) and Section 8(b)(4)(D) (from which the former section was derived), the construction placed upon Section 8(b)(4)(D) by the Board, and the impact of Section 10(k) on both Sections 8(b)(4)(D) and 303(a)(4), as disclosed by the legislative history of the Act.

took place after and in the face of a Board determination under Section 10(k) that the employees whom it represented were not entitled to the work in dispute. Petitioners asserted that the judgment of the trial court was fatally erroneous in having awarded damages for picketing which preceded the adverse award of the Board. The Court of Appeals rejected this position, and affirmed the judgment below.

SPECIFICATION OF ERRORS TO BE URGED.

The Court of Appeals for the Ninth Circuit erred:

(1) In holding that activities of a labor organization for the object defined by Section 303 of the Act are illegal under that section, even though such activities precede a determination by the Board under Section 10(k) that the employees represented by the labor organization are not entitled to the work in question.

(2) In holding that conduct which is lawful under Section 8(b)(4)(D) of the Labor Relations Act is unlawful under Section 303(a)(4) of the Act.[7]

(3) In holding the District Court for the Territory of Alaska to be a "district court of the United States" within the meaning of Section 303(b) of the Act, and thus approving the application by the trial court to the instant case of the rules concerning

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[7]The additional specifications of error which follow are not relied on for the granting of this petition, but are preserved for presentation to the Court if the writ is issued.

agency, jurisdiction, and service of process, which are laid down in Section 301 of the Act.[5]

(4) In approving instructions to the jury which permitted the International and Local 16 to be held jointly liable as co-conspirators for acts committed by the agents of only one of them, without regard to the

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[5]Section 301 provides, in part, as follows:

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

"(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

"(e) For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

Had the Court of Appeals upheld the position of the petitioners that the trial Court was not a "district court of the United States" within the meaning of Section 303(b) of the Act, it would have been required to consider their contention that the trial Court, as "any other court having jurisdiction of the parties" (Section 303(b)) was required to apply the local, in this case the Alaska, law to the issues of jurisdiction, service of process, and the principles of agency to be applied.

necessity for proof of a conspiracy to engage in activities *for an object proscribed by the Act.*[9]

(5) In upholding the trial court's refusal to instruct the jury concerning the respondent's duty under the Act to bargain collectively, which removed respondent's breach of such duty from the consideration of the jury as a defense to the action, or in mitigation of damages.[10]

REASONS FOR GRANTING THE WRIT.

1. A major objective of Congress in enacting the Taft-Hartley Act was to meet the demand generated by public opinion, and enunciated in the 1947 Presidential Message on the State of the Union,[11] for legislation to deal with the problem of jurisdictional disputes. The legislative history of the Act[12] leaves no doubt that the problem created by such disputes were among those uppermost in the minds of the legislators as requiring statutory treatment,[13] where none

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[9]The instructions claimed to be erroneous are given in the Appendix, pp. i to iii.

[10]The instructions requested by petitioners, and refused, are given in the Appendix, pp. iii to vi.

[11]93 Cong. Rec. 136, Jan. 6, 1947.

[12]This history has been compiled by the Board and published in the two-volume "Legislative History of the Labor Management Relations Act, 1947", issued by the Government Printing Office. For ease of reference excerpts from the legislative history cited in this petition will be to this work, in the following form: ..... Leg. Hist, ...

[13]See, for example, the remarks of Senator Ball at 2 Leg. Hist. 1354, 1355; of Senator Smith at 2 Leg. Hist. 1364; of Senator Aiken at 2 Leg. Hist. 1374-1375.

had existed before.[14] As a result, the jurisdictional dispute provisions became a significant part of the new statute.

The instant case concerns this important area of the Taft-Hartley Act. It deals, by necessity, with the question of the basic approach adopted by Congress for the solution of the problems of jurisdictional disputes, as well as with the inter-relation between the functions of the National Labor Relations Board in handling such disputes, and the remedies available to private suitors for violation of the proscriptions of the Act against certain activities in connection with them. As the first federal appellate decision construing the entire statutory scheme on the subject matter,[15] it has decided vital questions concerning the administration of the Act which should be settled by this Court.

The Court of Appeals held that the question of which employees are entitled to disputed work, as that may be determined by the Board in a proceeding under Section 10(k), was immaterial in an action for damages under Section 303(a)(4). It determined that a union which engaged in a primary strike against

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[14]See, for example, *United States v. Hutcheson*, 312 U.S. 219, 61 S.Ct. 463, 85 L.Ed. 819; *National Labor Relations Board v. Gluek Brewing Co.*, 8 Cir., 144 F. (2d) 847.

[15]*Herzog v. Parsons*, App. D.C., 181 F. (2d) 781, cert. den. as *Parsons v. Herzog*, 340 U.S. 810, 71 S.Ct. 37, 95 L.Ed. 20, dealt solely with an aspect of the powers and duties of the Board under Section 10(k) of the Labor Relations Act. *Schatte v. International Alliance, etc.*, 9 Cir., 182 F. (2d) 158, cert. den. 340 U.S. 877, 71 S.Ct. 64, 95 L.Ed. 30, was confined to the problem of the nature of the allegations required to state a cause of action under Section 303(a)(4).

an employer to require him to assign particular work to employees whom it represented was liable for any damages caused, even if the Board had previously determined in a proceeding under Section 10(k) that the employees represented by the striking union were entitled to the work. Such a holding performs a two-fold mischief: (a) it frustrates the Congressional purpose to solve the problems of jurisdictional disputes by resolving them on their merits; (b) it creates irreconcilable conflicts between the Board's administration of Section 8(b)(4)(D) and the application by the courts of Section 303(a)(4).

(a) The treatment which the respective houses of Congress gave jurisdictional disputes in the bills which originated in each was vitally disparate. H. R. 3020, the House version of the legislation, outlawed entirely concerted action by labor organizations arising out of jurisdictional disputes.[16] The Senate, how-

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[16]This was accomplished by the provisions of Secs. 2(15) and 12(a)(3)(A).

Section 2(15) provided as follows:

"The term 'jurisdictional strike' means a strike against an employer, or other concerted interference with an employer's operations, an object of which is to require that particular work be assigned to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class." (1 Leg. Hist. 42-43.)

Section 12(a)(3)(A) provided as follows:

"The following activities, when affecting commerce, shall be unlawful concerted activities: • • •

"(3) Calling, authorizing, engaging in, or assisting——

"(A) any sympathy strike, jurisdictional strike, monopolistic strike, or illegal boycott, or any sit-down strike or other concerted interference with an employer's operations conducted by remaining on the employer's premises." (1 Leg. Hist. 77-78.)

ever, adopted a different approach. Recognizing that jurisdictional disputes were in a special category and that experience had shown that obstructions to commerce arising from them could best be removed not by outlawing them completely but by a fair adjustment of them, the Senate provided for such an adjustment in its bill, S. 1126. Thus, when the Senate bill was reported to the Senate by its Committee on Labor and Education, it was made clear that Sec. 10(k) of that bill had been derived from the bill originally introduced by Senator Morse to deal with jurisdictional disputes.[17]

Sections 8(b)(4)(D) and 10(k) of S. 1126 provided as follows:

Sec. 8(b)(4)(D): "It shall be an unfair labor practice for a labor organization or its agents

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"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities

[17] Senator Morse stated:

"I am very happy that on March 10, in a speech which I am sure my colleagues at the time thought was too long, I laid the foundation for my proposals for amendments to the Wagner Act. At that time I offered S. 858, containing the specific proposals which I recommended in that speech insofar as the Wagner Act was concerned. I am very pleased that in the bill which we are reporting today practically all of the provisions of S. 858 are contained in it plus some refinements of S. 858 which I have developed on the issues since my speech on March 10, 1947." (2 Leg. Hist. 1000-1001.)

S. 858 provided that jurisdictional disputes be dealt with by arbitration.

or to perform any services in the course of their employment * * * (D) for the purpose of forcing or requiring any employer to assign to members of a particular labor organization work tasks assigned by an employer to members of some other labor organization unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work tasks * * *" (1 Leg. Hist. 112-114.)

Sec. 10(k): "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen or to appoint an arbitrator to hear and determine such dispute, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or the arbitrator appointed by the Board *or upon such voluntary adjustment of the dispute,* such charge shall be dismissed. The award of an arbitrator shall be deemed a final order of the Board." (Italics supplied.) (1 Leg. Hist. 130-131.)

Senate Report No. 105 on S. 1126 explained these sections as follows:

"Jurisdictional disputes that constitute unfair labor practices within the meaning of section 8(b)(4)(D) may be heard by the Board or an

arbitrator unless within 10 days the parties satisfy the Board that *they have adjusted the dispute or agreed to methods for adjusting it.* If the parties comply with the determination of the Board or the arbitrator appointed by it, *or voluntarily adjust the dispute,* the Board shall dismiss the charge. Finally, the award of the arbitrator is given the same status and force as a final order of the Board, a provision which will avoid the necessity of the Board hearing the dispute if it has designated an arbitrator for that purpose and also will permit the Board to seek enforcement of the award without further proceedings." (Italics supplied.) (1 Leg. Hist. 433.)

When the conference of the two houses had met, considered the differing versions of the bills they had initially passed, and then reported to their respective houses the bill which subsequently became the Act, House Conference Report No. 510 on H.R. 3020 had this to say with respect to the version finally adopted:

"The Senate amendment also contained a new section 10(k), which had no counterpart in the House bill. This section would empower and direct the Board to hear and determine disputes between unions giving rise to unfair labor practices under section 8(b)(4)(D) (jurisdictional strikes). The conference agreement contains this provision of the Senate amendment, amended to omit the authority to appoint an arbitrator. If the employer's employees select as their bargaining agent the organization that the Board determines has jurisdiction, and if the Board certifies that union, the employer will, of course, be under the statutory duty to bargain with it." (1 Leg. Hist. 561.)

This legislative history establishes that the view of the Senate concerning the best method with which to deal with jurisdictional disputes prevailed, and that the bill as finally enacted embodied a basic distinction between such disputes and secondary boycotts, concerning which no procedure analogous to that of Sec. 10(k) was included. The emphasis with respect to jurisdictional disputes was on a settlement of the dispute on its merits. Should the parties themselves fail to settle the dispute, the determination of the dispute was left with the Board. It was only when the parties to the dispute failed to comply with the determination of the Board that concerted activities of labor organizations in connection with such a dispute were to become unfair under the provisions of Section 8(b)(4)(D), and actionable under Section 303(a)(4).

(b) The Board has recognized this congressional purpose in its construction of Sections 10(k) and 8(b)(4)(D). Thus, it has held that a strike by a labor organization for the object defined by Section 8(b)(4)(D), which occurs before a Board determination of the dispute under Section 10(k), does not constitute a violation of the former section. It is only when such activities take place in the face of a determination under Section 10(k) which is adverse to the union engaging in them that the section is violated.[18]

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[18] *Westinghouse Electric Corporation*, 94 NLRB No. 63, 28 LRRM 1058.

Earlier in the same case, the Board had issued a 10(k) determination adverse to the labor organizations involved, against which 8(b)(4)(D) charges had been filed. (83 NLRB 477.) A hearing then took place on the question of whether the respondent unions

As has been indicated, the rule laid down by the Court of Appeals concerning the meaning of Section 303(a)(4) is squarely to the contrary. As a result, a union, whose claim that the employees it represents are entitled to perform particular work is upheld by the Board in a determination under Section 10(k), can nevertheless be sued for damages for primary activities directed at compelling the employer to abide by the Board's award.[19]

The view of the statute adopted by the Court of Appeals thus removes the only effective assurance that employers will abide by awards of the Board resolving jurisdictional disputes on their merits. It

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had committed the unfair labor practice defined in Section 8(b)(4)(D). Based on that hearing, which did not consider events following the Board's 10(k) determination, the Trial Examiner found that Section 8(b)(4)(D) had been violated. The Board remanded the case to the Trial Examiner, stating in the course of its order:

> "The Respondents contended, inter alia, that they had complied with the Board's 10(k) determination in this case. No evidence with respect to such compliance or noncompliance was adduced at the hearing before the Trial Examiner.
>
> "We are of the opinion that the intent of Congress was that the General Counsel should allege and prove noncompliance with our 10(k) determination in 8(b)(4)(D) proceedings. Accordingly, we shall reopen the record in this case, and remand it to the Trial Examiner to give the General Counsel an opportunity to amend his pleadings and to introduce evidence to sustain his burden of proof." (Footnotes omitted.)

Thereafter, following an additional hearing, the Trial Examiner again found that the respondent unions had violated Section 8(b)(4)(D), basing his finding on a strike called by the union *before* the Board's 10(k) determination had been made. In reversing the Trial Examiner's finding the Board said:

> "Clearly, the strike *before* the determination cannot prove noncompliance with the determination."

There being no evidence that the strike had continued after the 10(k) determination, the Board dismissed the complaint.

[19] Under the Labor Relations Act, no provision is made for direct enforcement by the Board through the Courts of Appeals of its Section 10(k) awards.

makes the decisions of the Board under 10(k) binding on unions, but only advisory as to employers, and hence defeats the object of Congress to make the Board's determination under that Section binding upon all of the parties to the dispute.

That Congress did not intend such results to flow from Section 303(a)(4) is manifest. The Section was not created to nullify the results to be achieved by the Board under Section 10(k). It was designed to implement the remedies available to employers against unions which persisted in seeking particular work for employees they represented *after an adverse Board determination under Section 10(k)*. Conversely, it could hardly have been intended to create a cause of action on behalf of employers who themselves refused to abide by the Board determination under Section 10(k).

From the foregoing, it is apparent that this case raises questions not only concerning the meaning of Section 303(a)(4), but also raises important questions concerning the administration of the Labor Relations Act which should be settled by this Court. It is only in reviewing an action under Section 303(a)(4) that the questions of the inter-relation of that section with Sections 8(b)(4)(D) and 10(k) can be adequately considered and determined.

2. The decision of the Court of Appeals appears to conflict with the principle laid down by this Court in *International Brotherhood of Electrical Workers, etc. v. National Labor Relations Board*, 341 U.S. 694, 71 S. Ct. 954, 95 L. Ed. 793, that identical language

in Sections 8(b)(4) and 303 is entitled to the same meaning in both Sections.[20] The Court of Appeals gives the language of Section 303(a)(4), which is derived from and identical with Section 8(b)(4)(D), a meaning different from that which the Board, and proper construction, places on the latter Section. In doing so it ignores the intention of Congress in adding Section 303[21] to give employers a "cause of action to recover any damages caused by the activities made unfair by Section 8(b)(4)."[22]

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[20]71 S.Ct. 954, at 959; 95 L.Ed. 793, at 798.

[21]The Section was added to the Senate version of the bill during debate. See 2 Leg. Hist. 1370.

[22]Quoted from the remarks of Representative Lesinski. (1 Leg. Hist. 912.) The following additional excerpts from the legislative history demonstrate that the provisions of Section 303 were intended merely to create an additional sanction in favor of employers for the activities proscribed by Section 8(b)(4):

"Mr. Pepper. Mr. President, I had assumed that the Ball amendment and the Taft amendment had both, in defining the boycott or the jurisdictional strike, employed substantially the same language as is used in section 8 of the bill, where those things are made an unfair labor practice. It just dawned on me that the Senator has made it unlawful—not an unfair labor practice, but he has made it unlawful to engage in a boycott or in a jurisdictional strike. * * *

"* * * was it the desire of the Senator from Ohio to make those acts unlawful?

"Mr. Taft. That is correct. *I may say that the definition is exactly the same as the definition we had of an unfair labor practice.* The effect of making it unlawful is simply that a suit for damages can be brought for that kind of thing. There is no criminal penalty of any sort." (Emphasis added.) (2 Leg. Hist. 1371.)

* * * * * * *

"Mr. Pepper. * * *

"In addition to that, the Senator from Ohio proposes to make the basis of a substantive suit at law for damages what the bill in its principal capacity describes as an unfair labor practice. * * *" (2 Leg. Hist. 1390.)

* * * * * * *

"Mr. Ball. I am sorry; if the Senator from Michigan will read subsection (1) of section 10 of the committee bill, on

CONCLUSION.

The decision of the Court of Appeals presents serious problems affecting the administration of the Taft-Hartley law. If permitted to stand it will open the way to further conflicts between determinations of the Board in Section 10(k) and Section 8(b)(4)(D) proceedings and ruling of the courts in Section 303(a)(4) suits. Uncertainty and difficulties in labor relations can and undoubtedly will result from such conflicts. A determination by this court is necessary to clarify the situation presented by the judgment below.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Dated, San Francisco, California,
August 17, 1951.

Respectfully submitted,
RICHARD GLADSTEIN,
Counsel for Petitioners.

GLADSTEIN, ANDERSEN & LEONARD,
ALLAN BROTSKY,
Of Counsel.

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page 33, he will find that no hearing is required. There is simply an investigation by a regional attorney. In any event, *we are defining very clearly, in this amendment and in the pending bill, secondary boycotts and jurisdictional strikes and the definition is the same.* We are defining clearly what we want to make unlawful. * * *" (Emphasis added.) (2 Leg. Hist. 1352.)

(Appendix Follows.)

Appendix.

Appendix

Instructions Nos. 6 and 7, which petitioners claim were erroneous, read as follows:

"6. If you find from a preponderance of the evidence that during the period stated the defendants, acting separately or jointly, engaged in or induced or encouraged plaintiff's employees at Juneau, Alaska, to engage in a concerted refusal in the course of their employment to manufacture, process, transport or otherwise handle or work on any lumber, or to perform any services for the plaintiff, and that the object thereof was to force or require the plaintiff to assign the work of loading its barges with its lumber to members of Local 16 rather than to other persons to whom such work had been assigned, and that such acts directly and proximately caused pecuniary loss to the plaintiff, your verdict should be for the plaintiff in such amount as you find it has been damaged, not exceeding in any event the amount sued for. On the other hand, if you do not so find, your verdict should be for the defendants.

"In this connection you are instructed that, if you find from a preponderance of the evidence that the defendants, through their officers or agents acting within the scope of their employment, entered into a conspiracy or understanding to commit the aforesaid acts or any of them for the object or purpose stated, or acted jointly or in pursuance of a common purpose or design, then from the time of entering into such a conspiracy or understanding everything that was

done, said or written by any of the officers or agents of either in furtherance of such conspiracy or understanding and to effect the object or purpose thereof, regardless of whether done, said or written in Alaska or elsewhere, is binding on both of the defendants just as though they themselves, through their officers or agents, had done such acts or made such statements, and if the object of the conspiracy was accomplished, resulting in damage, each is liable for the whole thereof regardless of the degree of participation in the commission of the acts charged, or any of them.

"A conspiracy, common purpose or design may be proved by direct evidence or by proof of such circumstances as naturally tend to prove it and which are sufficient in themselves to satisfy an ordinary prudent person of the existence thereof. Therefore, it is not necessary that such a combination or understanding be shown to be in writing. It is sufficient if the evidence shows a combination of or cooperation between two or more persons to accomplish a common purpose.

"On the other hand, if you find that the defendants did not act in concert or in pursuance of a common purpose or design, you will consider the case against each defendant separately, and you may find either or both or neither of them liable." (R. 51-53)

"7. You are instructed that two or more persons or organizations may participate in a wrong although they do so in different ways, at different times and in unequal proportions. One may plan and the other may be the actual instrument in accomplishing the mischief, but the legal blame will rest upon both as

joint actors. Accordingly, one who directs, advises, encourages, procures, instigates, promotes, aids or abets a wrongful act by another is as responsible therefor as the one who commits the act, so as to impose liability upon such person to the same extent as if he had performed the act himself." (R. 53)

Instructions Nos. 1, 2, 12 and 13, offered by petitioners and refused, read as follows:

"1. You are instructed that it is the public policy of the United States that—

"Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

"It is the purpose and policy of the Labor Management Relations Act of 1947, oftentimes called the 'Taft-Hartley Act', in order to promote the full flow of commerce, to prescribe legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to de-

fine and prescribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce." (R. 34-35)

"2. The Taft-Hartley Act was enacted in the interests of public policy to avoid economic strife and warfare, and so if you find from a consideration of all the evidence in this case that the action of the Juneau Spruce Corporation in refusing to accede to the demand of IWA M-271 to turn over the loading of barges to Local 16 was unreasonable or unjustifiable, in view of that provision, plaintiff is not entitled to recover any damage it may have sustained on account of such unreasonable or unjustifiable refusal to bargain.

"This policy is applicable only to the territorial limits of the United States and not to Canada." (R. 35-36)

"12. You are instructed that section 201 of the Taft-Hartley Act proides as follows:

"That it is the policy of the United States that:

"'(a) Sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interests of the employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees;

"'(b) The settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for settlement of disputes; and

"'(c) Certain controversies which arise between parties to collective bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreement provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies." (R. 43-44)

"13. Section 204 of the Taft-Hartley Act provides as follows:

"'In order to prevent or minimize interruptions of the free flow of commerce growing out of labor dis-

putes, employers and employees and their representatives, in any industry affecting commerce, shall:

"'(1) Exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provisions for adequate notice of any proposed change in the terms of such agreement;

"'(2) Whenever a dispute arises over the terms or application of a collective bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously;

"'(3) In case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this act for the purpose of aiding in a settlement of the dispute.'" (R. 44)

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1951

No. 280

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION and INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, LOCAL 16,

Petitioners,

vs.

JUNEAU SPRUCE CORPORATION (a corporation),

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR THE PETITIONERS.

RICHARD GLADSTEIN,
240 Montgomery Street, San Francisco 4, California,
Counsel for Petitioners.

GLADSTEIN, ANDERSEN & LEONARD,
NORMAN LEONARD,
ALLAN BROTSKY,
240 Montgomery Street, San Francisco 4, California,
Of Counsel.

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INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION and INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, LOCAL 16,
Petitioners,

vs.

JUNEAU SPRUCE CORPORATION (a corporation),
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR THE PETITIONERS.

OPINIONS BELOW.

The opinion of the District Court for the Territory of Alaska, rendered in ruling upon demurrers and motions of petitioners, is reported at 83 F. Supp. 224. The opinion of the Court of Appeals (R. 1106) is reported at 189 F. (2d) 177.

JURISDICTION.

The judgment of the Court of Appeals was entered on May 5, 1951. (R. 1144.) The order of the Court of Appeals denying petitioners' timely petition for rehearing was entered on June 8, 1951. (R. 1145.) The petition for writ of certiorari was filed on August 27, 1951, and was granted on October 22, 1951. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

STATUTE INVOLVED.

This case involves what are commonly known as the "jurisdictional dispute" sections of the Labor Management Relations Act, 1947, often referred to as the Taft-Hartley Act, 61 Stat. 136, 29 USC (Supp. III) § 161, et seq.[1]

Section 8(b)(4)(D) of the National Labor Relations Act, as amended, 29 USC (Supp. III) § 158(b)(4)(D), and Section 303(a)(4) of the Labor Management Relations Act, 1947, 29 USC (Supp. III) § 187(a)(4), contain virtually identical provisions. For ease of reference and comparison, their language is set forth below in parallel columns, with the identical language in each section italicized.

---

[1]The Labor Management Relations Act, 1947, will sometimes be referred to herein as the "Act". Title 1 thereof, which is the National Labor Relations Act, as amended, will sometimes be referred to herein as the "Labor Relations Act".

Section 8(b)(4)(D).

"SEC. 8. • • •

"(b) It shall be an unfair labor practice for a labor organization or its agents • • •

"(4) *to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is* • • •

"(D) *forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work* • • •"

Section 303(a)(4).

"SEC. 303. • • •

"(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization *to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is* • • •

"(4) *forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the* National Labor Relations *Board determining the bargaining representative for employees performing such work* • • •"

Section 10(k) of the National Labor Relations Act, as amended, 29 USC (Supp. III) § 160(k), under which the National Labor Relations Board (hereafter called the Board) determines which employees in a jurisdictional dispute are entitled to particular work, provides as follows:

"Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed."

Section 303(b) of the Labor Management Relations Act, 1947, 29 USC (Supp. III) § 187(b), provides as follows:

"Sec. 303 * * *

"(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof[2] without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall

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[2]The relevant limitations and provisions of Sec. 301 read as follows:

"Section 301.

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and

recover the damages by him sustained and the cost of the suit."

QUESTIONS PRESENTED.

(1) Whether activities of a labor organization for the object defined by Section 303(a)(4) of the Act[3] are illegal and hence actionable under that section, unless they occur after and in the face of a determination by the National Labor Relations Board, under Section 10(k) of the Labor Relations Act, that the employees represented by such labor organization are not entitled to the work in question.

(2) Whether the provisions of Section 8(b)(4)(D) of the Labor Relations Act and Section 303(a)(4) of

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against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

"(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

"(e) For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

[3] "* * * forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work."

the Act each proscribe the same conduct on the part of labor organizations; conversely, whether conduct which is not a violation of Section 8(b)(4)(D) of the Labor Relations Act is nevertheless illegal and actionable under Section 303(a)(4) of the Act.

(3) Whether the District Court for the Territory of Alaska is a district court of the United States within the meaning of Section 303(b) of the Act.

(4) Whether the breach by a party seeking damages in an action under Section 303(a)(4) of the Act of that party's duties under the Act may constitute a defense to the action, or be considered in mitigation of damages.

STATEMENT OF THE CASE.

Respondent Juneau Spruce Corporation, plaintiff below, sued the International Longshoremen's and Warehousemen's Union (hereafter called the "International") and International Longshoremen's and Warehousemen's Union, Local 16 (hereafter called "Local 16"), unincorporated trade unions, in the District Court for the Territory of Alaska for one million twenty-five thousand dollars ($1,025,000) in damages, basing its alleged cause of action on the provisions of Sections 303(a)(4) and 303(b) of the Taft-Hartley Act.

The events out of which the alleged cause of action arose may be briefly summarized as follows:

The respondent came into existence as a corporation and began its lumber manufacturing operations

in the spring of 1947, when it acquired the business of Juneau Lumber Mills, Inc. By contract with the latter corporation, the respondent purchased a sawmill and planing mill at Juneau, Alaska, logging equipment at Edna Bay, Alaska, retail yards at Juneau, Anchorage and Fairbanks, Alaska, together with all equipment used in those operations. (R. 113-118.) The operations of the respondent began on May 2, 1947, with the mill employees in Juneau consisting of those formerly employed by Juneau Lumber Mills, Inc. (R. 123, 228.)

At the time of the take-over, the respondent's predecessor was a party to a collective bargaining agreement with Local 16, whereby it had agreed to hire, and was hiring, longshoremen represented by that labor organization to perform all longshore work in connection with its operations. (Def. Exh. C, R. 655; R. 918-919.) In practice, the work performed under that contract consisted of the loading of lumber aboard the tugs or boats of purchasers at the company's docks in Juneau. (R. 170-171, 232.) For this work the longshoremen were paid by the respondent's predecessor. Lumber which was shipped by commercial steamer was also loaded aboard ship by longshoremen represented by Local 16, who in those instances were employed directly by the steamship companies. (R. 155.)

These kinds of shipment accounted for but a small proportion of the predecessor's production at the time of the take-over, the greater proportion of production at that time going to the United States Army Engi-

neers, which used its own personnel to pick up its lumber at the company dock. (R. 154-155, 183.) Until September, 1947, the situation with respect to the disposition of production remained the same for respondent as it had for its predecesor. Although respondent had not assumed its predecessor's collective bargaining agreement with Local 16 (R. 117), it continued to use longshoremen for the work covered under that agreement (R. 174-175, 933); the bulk of its production continued to go to the Army Engineers.

In September, 1947, respondent's contract with the Army Engineers was cancelled. (R. 183.) In anticipation of this, and of the necessity for it to dispose of most of its lumber elsewhere, the respondent had leased sea-going barges, to be used in shipping the bulk of its lumber to the United States. (R. 187.) That portion which the respondent had theretofore been shipping to the United States had gone by commercial steamer (R. 157), following the practice of respondent's predecessor, which had never employed its own sea-going barges for that purpose. (R. 982.)

In October, 1947, instead of using longshoremen for the work, the respondent employed its mill employees to place the first load of lumber on this sea-going barge. (R. 185-187.) These employees had never before loaded lumber aboard sea-going craft for shipment to the United States. (R. 982.) Immediately after the barge was loaded (R. 185), a committee of Local 16 visited the respondent, to request that the longshoremen it represented be given the barge-loading work. (R. 188.) The respondent rejected this request. (R.

189.) A second barge was loaded in the same manner in March, 1948.[4] (R. 202.) Promptly thereafter a delegation from Local 16 appeared before a membership meeting of the International Woodworkers of America, Local M-271 (hereafter called "Local M-271"), which represented the mill employees under a collective bargaining agreement with the respondent. Their position that longshoremen, rather than the mill employees whom Local M-271 represented, were entitled to perform the work of loading the sea-going barges was explained to those in attendance. (R. 832-836.) After the longshoremen's delegation had left, the Local M-271 meeting voted unanimously as follows:

> "Motion moved and seconded to go on record to not load barges. We figure this work belongs to the longshoremen." (Def. Exh. A, R. 467-472; R. 838-839.)

Within the following week, a delegation consisting of representatives of Local M-271 and Local 16 informed Eugene S. Hawkins, Vice-President and General Manager of respondent, that Local M-271 had agreed that the work of loading the barges belonged to the longshoremen. Hawkins was further informed that the members of Local M-271 would honor the picket line which Local 16 intended to place before respondent's mill if the latter persisted in its refusal to permit longshoremen represented by Local 16 to perform the work of loading the barges. (R. 203-206.) Even though the company's cost of operations would

[4] Such a diversion of work from the Juneau longshoremen caused a reduction of one-third in their income. (R. 621.)

not have been materially affected by acceding to the joint request of the two locals (R. 252-253, 256-275, 266), and the respondent had earlier informed the longshoremen that it would accept such an agreement between them (R. 182), the respondent insisted that the work be done by Local M-271. (R. 261.)

A day or two later, on April 9, 1948, Local M-271 called a meeting which was attended by the overwhelming majority of the mill employees (R. 383, 404, 840), again to discuss the question of the longshoremen's right to perform the barge-loading work and Local M-271's position with respect to the impending picket line. The minutes of the previous meeting recognizing the longshoremen's right to perform the work were read and approved and a general discussion ensued. (R. 841.) Those in attendance resolved unanimously to honor Local 16's picket line if it was established. The official minutes of the meeting read as follows:

> "Special meeting, April 9, 1948. Discussion on Conditions Relative to ILWU loading barges. Move made and seconded to take vote on whether to cross picket line—again a unanimous vote to honor picket line of ILWU." (Def. Exh. A, R. 467-472; R. 842.)

The following morning Local 16 established a peaceful picket line at the respondent's mill, and the mill employees honored it in accordance with their resolution passed the previous evening. (R. 843.)

On April 10, 1948, the respondent filed an unfair labor practice charge (the disposition of which is

discussed hereafter) with the National Labor Relations Board, alleging that Local 16 was violating Section 8(b)(4)(D) of the Labor Relations Act. From April 10 to July 19, 1948, respondent's mill was closed. (R. 310.) During that entire period the respondent refused to negotiate with the unions concerning a settlement of the dispute on terms agreeable to both unions. (R. 781, 891, 991, 1027.) On the contrary, it insisted that Local M-271 perform the work of barge-loading, although that organization continued to maintain that the longshoremen represented by Local 16 were entitled to the work. (R. 323-325.) In May (R. 453) respondent telephoned from its office in Portland to the President of Local M-271 and asked him to come to that city to see the officers and counsel for his International union. Respondent paid the expenses of the trip. (R. 534-535.) After the return of its President from Portland, Local M-271 entered into an agreement with respondent in which that Local agreed:

> "* * * to cross the picket line established by Local 16, ILWU, and claim jurisdiction of all work performed by employees of the Juneau Spruce Corporation according to our contract, also the loading of company-owned or leased barges with company-owned gear * * *" (Pl. Exh. 7, R. 462.)

The agreement was followed by the resumption of operations on July 19, 1948, although the peaceful picketing of Local 16 continued. (R. 439-440.) Thereafter, another barge was loaded with lumber by mill employees and was shipped from the mill at Juneau

to Prince Rupert, British Columbia, on August 27, 1948. The longshoremen at that port refused to unload the barge because of the existence of the dispute between Local 16 and the respondent. (Pl. Exh. 12, R. 617; R. 619.) The barge was rerouted to Tacoma, Washington, where it was unloaded. (R. 687, 788.) On October 11, 1948, the manufacturing operations at the mill ceased again, through the lack of storage capacity at respondent's mill caused by its inability to have its lumber unloaded at Puget Sound ports. (R. 440, 692-696.) It remained closed until the trial of the action began on April 27, 1949. (R. 411.)

The unfair labor practice charge which the respondent had filed on April 10, 1948, was investigated by the Regional Director of the 19th Region of the Board and dismissed by him, on the ground that his investigation showed insufficient evidence of violation to warrant further proceedings. This dismissal was appealed by the respondent, and upheld by the Acting General Counsel of the Board on August 4, 1948.[5] A new charge alleging a violation by Local 16 of Section 8(b)(4)(D), based on the resumption of work by the mill employees represented by Local M-271, was filed by the respondent on August 3, 1948. Pursuant to the provisions of Section 10(k) of the Labor Relations Act, the Board directed a hearing on the question of which employees were entitled to the disputed work. That hearing resulted in a Board determination on April 1, 1949, that the longshoremen represented by Local 16 were not entitled to the barge-

[5] *Juneau Spruce Corp.*, Case No. 19-CD-2 (unreported).

loading work.[6] On May 9, 1949, following this adverse determination by the Board, Local 16 discontinued its picketing.[7]

Respondent filed its complaint in the trial court against the International and Local 16 on October 19, 1948, claiming damages to that date for the picketing which had commenced on April 10 of that year. The trial court permitted respondent to file its second amended complaint on April 27, 1949, the opening day of the trial. (R. 28-29.) In this amended pleading, damages were sought for the picketing which had occurred between April 10, 1948, and April 27, 1949. (R. 6-7.) Neither in its original or amended complaints did the respondent allege, nor did it prove at the trial of the action, that the picketing of the petitioners of which it complained followed and occurred in the face of a determination of the Board under Section 10(k) that the employees represented by the petitioners were not entitled to the disputed work of barge-loading. The trial court did not conceive such non-compliance by petitioners with a determination by the Board under Section 10(k) to be an essential element of respondent's cause of action, and permitted the jury to assess damages against petitioners for the entire period from April 10, 1948, to April 27, 1949 (Instruction No. 5, R. 50-51), although all but twenty-seven days of this period preceded the Board's determination of the dispute under Section 10(k). Upon a jury verdict, judgment was en-

[6] *Juneau Spruce Corp.*, 82 NLRB 650.
[7] *Juneau Spruce Corp.*, 90 NLRB 1753, n. 5 at 1754.

tered against both petitioners in the sum of $750,000, plus costs and disbursements, including an attorney's fee of $10,000. (R. 73-74.) On appeal, a basic question which the Court of Appeals was called upon to decide was whether the picketing of Local 16 which preceded the Board's determination on April 1, 1949, that the longshoremen represented by Local 16 were not entitled to the disputed work, was actionable under Section 303(a)(4). Petitioners contended that Section 303(a)(4) rendered illegal and hence actionable only such picketing by a labor organization as took place after and in the face of a Board determination under Section 10(k) that the employees whom it represented were not entitled to the work in dispute. Petitioners asserted that the judgment of the trial court was fatally erroneous in having awarded damages for picketing which preceded the adverse award of the Board. The Court of Appeals rejected this position.

Before trial, by special appearance for the purpose of quashing the purported service of summons upon it (R. 7) and by demurrer (R. 15), the International challenged the jurisdiction of the trial court over its person. The trial court, conceiving itself to be a district court of the United States within the meaning of Section 303(b) of the Act (83 F. Supp. 224), denied the motion to quash and overruled the demurrer. (R. 21-22.) Jurisdiction over the person of the International, as well as the validity of the service upon it, was based on the alleged presence within the Territory of Alaska of an agent of the International, which

itself maintained no office or place of business therein. (R. 12,273.)[8] On appeal, such lack of jurisdiction by the trial court was asserted by the International, but was rejected by the Court of Appeals, which also held the trial court to be a district court of the United States, and hence warranted in basing its jurisdiction over the International on the provisions of Section 301 of the Act.

At the trial of the action, petitioners offered certain instructions which would have permitted the jury to consider the breach by respondent of its duties under the Act as a defense to the action or in mitigation of damages. (R. 34-36, 43-44; reprinted in the Appendix hereto, pp. i to iv.) These instructions were refused by the trial court, whose action in so doing was upheld by the Court of Appeals.

SPECIFICATION OF ERRORS TO BE URGED.

The Court of Appeals for the Ninth Circuit erred:

(1) In holding that activities of a labor organization for the object defined by Section 303 of the Act are illegal and hence actionable under that Section, even though such activities precede a determination by the Board under Section 10(k) that the employees represented by such labor organization are not entitled to the work in question.

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[8] This holding was based upon the misconception that the provisions of Section 301 of the Act were here applicable. We will demonstrate below that they were not. This same misconception resulted in an erroneous holding that service upon the alleged agent was service upon the International.

(2) In holding the District Court for the Territory of Alaska to be a "district court of the United States" within the meaning of Section 303(b) of the Act, and thus approving the application by the trial court to the instant case of the rules concerning agency, jurisdiction, and service of process, which are laid down in Section 301 of the Act.

(3) In upholding the trial court's refusal to instruct the jury concerning the respondent's duties under the Act, which removed respondent's breach of such duties from the consideration of the jury as a defense to the action, or in mitigation of damages.

SUMMARY OF ARGUMENT.

I. Activities of a labor organization for the object defined by Sec. 303(a)(4) of the Act are not illegal and hence actionable under that section, unless they occur after and in the face of a determination by the National Labor Relations Board, under Sec. 10(k) of the Labor Relations Act, that the employees represented by such labor organization are not entitled to the work in question.

A. The provisions of Sec. 303(a)(4) of the Act, and Secs. 8(b)(4)(D) and 10(k) of the Labor Relations Act, are interrelated in such a manner as to make the meaning of the former Section dependent upon the construction of the latter two Sections taken together. The legislative history of Sec. 303 establishes this to be the case. That history shows that, by

including Sec. 303(a)(4) in Title III of the Act, Congress intended to make subject to an action for damages under that Section only such activities of labor organizations in connection with jurisdictional disputes as were made unfair labor practices by the provisions of the Labor Relations Act, which is Title I of the Act.

The activities of unions in jurisdictional disputes which are made an unfair labor practice in the Labor Relations Act are defined, not by the provisions of Sec. 8(b)(4)(D) alone, but by that Section taken together with Sec. 10(k), which prescribes the powers and duties of the Board in jurisdictional disputes to make determinations of which employees are entitled to perform particular work. The Board has construed these two Sections together to hold that only such conduct by a labor union as follows and is in non-compliance with the determination of the dispute by the Board under Sec. 10(k), constitutes an unfair labor practice under Sec. 8(b)(4)(D). *Westinghouse Elec. Corp.*, 94 NLRB No. 63, 28 LRRM 1058.

When Sec. 303(a)(4), as well as Sec. 8(b)(4)(D), is construed together with Sec. 10(k), the conduct defined in it becomes actionable only under the same conditions as the Board requires. Such a construction leads to results in accord with the Congressional purpose and design in dealing with jurisdictional disputes. That purpose was to solve the problems created by such disputes by having the Board resolve them on their merits, through a determination binding on all parties.

of whether certain employees were or were not entitled to particular work. Unless the unions involved complied with the determination of the Board, they were to be subjected to cease and desist orders by the Board and actions for damages by employers. Unless the employer complied, the union which represented the employees that the Board had determined were entitled to the disputed work was to be permitted to picket the employer to compel his compliance, which picketing would be immune from actions for damages or cease and desist orders by the Board. A different construction of Sec. 303(a)(4) would leave employers free to ignore the ruling of the Board under Sec. 10(k).

B. The ruling of the Court of Appeals, that the conduct defined by Sec. 303(a)(4) is actionable whenever it occurs, frustrates this purpose of Congress, by subjecting an employer to no penalty if he fails to comply with the award of the Board, and by permitting him to circumvent the authority of the Board to decide jurisdictional disputes. By holding that the conduct defined in Sec. 303(a)(4) is actionable whether it occurs before or after a determination of the Board under Sec. 10(k), and whether it is supported by, or contrary to, the Board's ruling, the Court of Appeals is construing the section so as to produce absurd, or at least unreasonable, results. The reliance of the Court of Appeals on the so-called "plain language" of Sec. 303(a)(4), to arrive at a construction permitting such absurd or

unreasonable results, violates the principle of *U. S. v. American Trucking Ass'ns.*, 310 U.S. 534, that the literal language of a statute which leads to such results must yield to its purpose.

The legislative history of Sec. 303 which the Court of Appeals claims is inconsistent with the construction of the Section urged by petitioners has been misconstrued by the Court. Furthermore, the failure of Congress expressly to relate Sec. 303(a)(4) to Sec. 10(k) is explainable by the fact that the former Section was added as a hastily devised amendment during the Senate debate on the Act.

II. The Court of Appeals erred in holding that the District Court for the Territory of Alaska is a district court of the United States, and thus permitted to stand error prejudicial to petitioners.

A. When Congress in 1947 employed the phrase "district court of the United States" in Sec. 303(b) of the Act, that phrase had a definite and restricted meaning excluding from its scope the district courts for the territories. *Mookini v. U. S.*, 303 U.S. 201; *McAllister v. U. S.*, 141 U.S. 174. The fact that the status of the District Court for the Territory of Alaska was fully considered when the Judicial Code was revised one year after the passage of the Act, and the Court was then considered not to be a district court of the United States, is further proof that Congress did not intend it to be a district court of the United States within the meaning of Sec. 303(b).

The meaning of the phrase being so clear, it was improper for the Court of Appeals to invest the trial court with a status that the Court thought Congress should have given it. *Bate Refrigerating Co. v. Sulzberger*, 157 U.S. 1; *U. S. v. Cooper Corp.*, 312 U.S. 600. The grant to a territorial court of the same jurisdiction as is possessed by a district court of the United States does not make the territorial court a district court of the United States. *Reynolds v. U. S.*, 98 U.S. 145.

B. By conceiving itself to be a district court of the United States, the trial court applied to this case provisions concerning jurisdiction, service and agency contained in Sec. 301 of the Act. In each instance, the rules contained in Sec. 301 differed from those which the trial court was required to apply under Alaska law. Under the later rules, the trial court could not have acquired jurisdiction over the person of the International, and would have had to apply more limited rules of agency to the evidence.

III. The failure of the respondent to observe its duty under the Act to attempt to settle the dispute should have been considered as a defense to its action, or in mitigation of damages.

Respondent had a duty under the Act to make reasonable efforts to settle the jurisdictional dispute. Respondent made no such efforts, but instead prolonged the dispute, when it refused to accept the joint request of the two unions involved that the work in question be assigned to employees represented by one

of them. The trial court's instructions to the jury deprived petitioners of their right to have this conduct on the part of the respondent considered as a defense to the action, or in mitigation of damages.

ARGUMENT.

I.

ACTIVITIES OF A LABOR ORGANIZATION FOR THE OBJECT DEFINED BY SEC. 303(a)(4) OF THE ACT ARE NOT ILLEGAL AND HENCE ACTIONABLE UNDER THAT SECTION, UNLESS THEY OCCUR AFTER AND IN THE FACE OF A DETERMINATION BY THE NATIONAL LABOR RELATIONS BOARD, UNDER SEC. 10(k) OF THE LABOR RELATIONS ACT, THAT THE EMPLOYEES REPRESENTED BY SUCH LABOR ORGANIZATION ARE NOT ENTITLED TO THE WORK IN QUESTION.

A. THE INTER-RELATION BETWEEN SECS. 8(b)(4)(D) AND 10(k) OF THE LABOR RELATIONS ACT AND SECTION 303(a)(4) OF THE ACT COMPELS THIS CONCLUSION.

1. Section 303(a)(4) was intended by Congress to make actionable only such conduct as was made an unfair labor practice by Sec. 8(b)(4)(D).

Secs. 8(b)(4)(D) and 303(a)(4) contain virtually identical provisions. For ease of reference and comparison, their language is set forth below in parallel columns with the identical language in each section italicized.

Section 8(b)(4)(D).

"Sec. 8. • • •

"(b) It shall be an unfair labor practice for a labor organization or its agents • • •

"(4) *to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is* • • •

"(D) *forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work* • • •"

Section 303(a)(4).

"Sec. 303. • • •

"(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization *to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is* • • •

"(4) *forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the* National Labor Relations *Board determining the bargaining representative for employees performing such work* • • •"

That the same conduct is addressed by both sections is demonstrated not only by this identity of language, but also by the legislative history of the Act.[9]

[9]This history has been compiled by the Board and published in the two-volume "Legislative History of the Labor Management Relations Act, 1947", issued by the Government Printing Office. For ease of reference excerpts from the legislative history cited in this brief will be to this work, in the following form: ..... Leg. Hist. .....

In discussing the provisions of the Conference Bill which was subsequently adopted into the present Act, Representative Lesinski made the following statement in connection with Sec. 303(a)(4):

> "* * * Employers are given a cause of action to recover any damages caused by the activities made unfair by Section 8(b)(4)[D]." (1 Leg. Hist. 912.)

Throughout the debate in the Senate on the amendment of Senator Taft, which became Sec. 303 of the Act, not only Senator Taft himself, but all other senators who spoke, both in favor of or against the amendment, were unanimous in construing the purpose of the amendment as simply to create an additional remedy in damages for activities which constituted unfair labor practices under Sec. 8(b)(4). These excerpts from the legislative history are set forth in the margin.[10]

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[10] "Mr. Pepper. Mr. President, I had assumed that the Ball amendment and the Taft amendment had both, in defining the boycott or the jurisdictional strike, employed substantially the same language as is used in section 8 of the bill, where those things are made an unfair labor practice. It just dawned on me that the Senator has made it unlawful—not an unfair labor practice, but he has made it unlawful to engage in a boycott or in a jurisdictional strike. * * *

"* * * was it the desire of the Senator from Ohio to make those acts unlawful?

"Mr. Taft. That is correct. *I may say that the definition is exactly the same as the definition we had of an unfair labor practice.* The effect of making it unlawful is simply that a suit for damages can be brought for that kind of thing. There is no criminal penalty of any sort." (Emphasis added.) (2 Leg. Hist. 1371.)

* * * * * * *

"Mr. Pepper. * * *

"In addition to that, the Senator from Ohio proposes to make the basis of a substantive suit at law for damages what

It is thus clear that Sec. 303(a)(4) was derived from and intended to be co-extensive with Sec. 8(b)(4)(D), and that Congress intended only such conduct as was made unfair by Sec. 8(b)(4)(D) to be actionable under the provisions of Sec. 303(a)(4).

2. The conduct defined by the terms of Sec. 8(b)(4)(D) becomes an unfair labor practice only if it follows and is in noncompliance with a determination of the Board under Sec. 10(k) concerning the employees entitled to the disputed work.

a. The Board has so construed Section 8(b)(4)(D).

Sec. 10(k) of the Labor Relations Act provides:

> "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed."

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the bill in its principal capacity describes as an unfair labor practice. * * *" (2 Leg. Hist. 1390.)

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"Mr. Ball. I am sorry; if the Senator from Michigan will read subsection (1) of section 10 of the committee bill, on page 33, he will find that no hearing is required. There is simply an investigation by a regional attorney. In any event, *we are defining very clearly, in this amendment and in the pending bill, secondary boycotts and jurisdictional strikes and the definition is the same.* We are defining clearly what we want to make unlawful. * * *" (Emphasis added.) (2 Leg. Hist. 1352.)

The Board has consistently construed this provision to mean that it must make a determination of a jurisdictional dispute under the section before a complaint charging a violation of Sec. 8(b)(4)(D) can issue under Sec. 10(b) of the Act.[11] It has further held that activities of a labor organization, covered by the language of Sec. 8(b)(4)(D) standing alone, which occur prior to a Board determination of the dispute under Sec. 10(k), do not constitute a violation of Sec. 8(b)(4)(D). The review of the Board's conduct under both sections, which follows, will so demonstrate.

The first instance of this interpretation by the Board is given by the Rules and Regulations and Statements of Procedure which it issued under the provisions of Sec. 10(k). After outlining the nature of the investigation to be made upon the filing of a charge under Sec. 8(b)(4)(D), the course to be followed in the event the parties submit satisfactory evidence of the adjustment of the dispute, and the nature of the hearing held to determine which employees are entitled to the disputed work, the Regulations further provide as follows:

> "If, after issuance of certification by the Board, the parties submit to the regional director satisfactory evidence that they have complied with the certification, the regional director shall dismiss the charge. If no satisfactory evidence of compliance

[11] The portions of Sec. 10(b) relevant to the issuance of complaints by the Board provide:

> "Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect . . ."

is submitted, the regional director may proceed with the charge under paragraph 4(D) of section 8(b) and section 10 of the act and the procedure prescribed in sections 203.9 to 203.51, inclusive, shall, insofar as applicable, govern." (Sec. 203.77, Rules and Regulations of the National Labor Relations Board, Series 6.)[12]

This initial interpretation by the Board of the relation between Secs. 10(k) and 8(b)(4)(D) with respect to all charges that the latter section was being violated received a flat challenge in the case of *Juneau Spruce Corp.*, 82 NLRB 650 (1949), but the challenge was rejected, and the Board held squarely that it had no power to issue a complaint pursuant to the provisions of Sec. 8(b)(4)(D) prior to a determination by it under the provisions of Sec. 10(k).[13] That case arose out of the same dispute which resulted in the filing of the action below in the trial court. The respondent here was the charging party before the

[12]Sec. 202.34 of the Board's Statements of Procedure, which is an elaboration of Sec. 203.77 of its Regulations, provides:

"*Compliance with certification; further proceedings.*—After the issuance of certification by the Board, the regional director in the region in which the proceeding arose communicates with the parties for the purpose of ascertaining their intentions in regard to compliance. Conferences may be held for the purpose of working out details. If the regional director is satisfied that parties are complying with the certification, he dismisses the charge. If the regional director is not satisfied that the parties are complying, he issues a complaint and notice of hearing, charging violation of section 8(b), (4)(D) of the act, and the proceeding follows the procedure outlined in sections 202.8 to 202.15."

[13]In an earlier case, *Moore Drydock Company*, 81 NLRB 1108 (1949), the Board made an identical holding, although there the issue was not raised by any of the parties.

Board. It contended that Sec. 10(k) gave the Board power to hear and decide a jurisdictional dispute only where the rights of two or more competing unions in cases of overlapping certifications or orders of the Board were involved. It was argued that Sec. 10(k) was inapplicable in all other instances of inter-union conflict, and that in such cases the Board had the duty of proceeding at once to hearing on the substantive charge of violation of Sec. 8(b)(4)(D).

The Board answered this contention of the petitioner here as follows:

> "We do not agree. We have held in the *Moore Drydock Company* case that, reading Sections 8(b)(4)(D) and 10(k) together, as we are required to do by the amended Act, the Board has no choice but to proceed 'to hear and determine' the dispute out of which the alleged unfair labor practice arose. The purposeful postponement of further proceedings (during the initial 10-day period); *the opportunity afforded the rival unions to reach a settlement* or to agree upon methods for reaching an adjustment of the dispute; the requirement that the charge be dismissed upon a showing that the dispute has been settled (during the initial stage) or compliance effected after the Board decision (the determination of dispute such as that made here); all lend persuasive support to the view that *Congress intended the Board first to attempt to resolve the controversy by means of a Section 10(k) determination.* It is only where it still is necessary thereafter to proceed with the unfair labor practice charge under Section 8(b)(4)(D)—in the event of noncom-

> pliance, for example, with the Determination of Dispute—that a complaint may be issued under Section 10(b). Thus, a Section 10(k) hearing has an effective function, and the Board a definite responsibility to discharge thereunder, to obviate the conventional unfair labor practice proceeding through a statutory device for expediting adjustment of such disputes. Moreover, in the absence of language specifically limiting the application of Section 10(k) to certain situations *only*, or even persuasive legislative history in support of such restricted application, the Board is obliged to give the effect to that Section which its language requires. The interpretation adopted here gives practical meaning to the concluding sentence in Section 10(k) which reads: 'Upon compliance by the parties to the dispute with the decision of the Board or *upon such voluntary adjustment of the dispute, such charge shall be dismissed.*" (Italics supplied; footnotes in the Board's decision are omitted.)

In subsequent cases, the Board has consistently followed this view of its function under Sec. 10(k) and the relation of that section to Sec. 8(b)(4)(D). In *Irwin-Lyons Lumber Co.*, 82 NLRB 916 (1949), the contention was made on a petition for rehearing by one of the parties that the hearing conducted under Sec. 10(k) is governed by the Administrative Procedure Act. In denying the motion for rehearing, the Board stated:

> "We do not agree. Under Section 202.32 of the Board's Rules and Regulations—Series 5, as amended, the hearing under Section 10(k) is non-

adversary in character, and, according to the procedure adopted therefor, conducted in the same way as a hearing in a representation proceeding. The Board adopted such procedure because the decision in the proceedings under Section 10(k) is a preliminary administrative determination made for the purpose of attempting to resolve a dispute within the meaning of that section; the unfair labor practice itself is litigated at a subsequent hearing before a Trial Examiner in the event the dispute remains unresolved. It is to the subsequent adversary hearing, which leads to a final Board adjudication, that Section 8 of the Administrative Procedure Act applies."

See, also, *Winslow Bros. and Smith Co.*, 90 NLRB 1379 (1950); *Stroh Brewery Co.*, 88 NLRB 844 (1950); and *Ship Scaling Contractors Ass'n*, 87 NLRB 92 (1949).

In the case of *Juneau Spruce Corp.*, 90 NLRB 1753 (1950), the Board made it plain that a determination by it under Sec. 10(k) which had not been complied with was essential to a finding of a violation of Sec. 8(b)(4)(D). The Board stated:

"*All* the factors essential to a violation of this section of the amended Act are present: By picketing the Company's premises, the Respondents induced and encouraged the Company's mill and millyard employees to engage in a concerted refusal in the course of their employment to perform services for the Company; the Respondents' object was to force the Company to assign the bargeloading work to the members of Local 16, or workers dispatched by Local 16, instead of to

the mill and millyard employees; the Company was not failing to conform to a certification of the Board determining the bargaining representative of the employees performing the bargeloading work, for there has been no such certification; *and, finally, the Respondents did not comply with the Board's Decision and Determination of Dispute in the previous proceeding held under Section 10(k) of the Act.*" (Italics supplied; footnotes in the Board's decision are omitted.)

Finally, in *Westinghouse Electric Corp.*, 94 NLRB No. 63, 28 LRRM 1058, decided by the Board after the opinion of the Court of Appeals was rendered,[14] the Board again construed both sections to mean that a strike, within the plain terms of Sec. 8(b)(4)(D), which occurs prior to a Board determination of the dispute under Sec. 10(k), does not constitute a violation of Sec. 8(b)(4)(D).[15] According to the Board,

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[14]But called to the attention of that Court in the Petition for Rehearing.

[15]Earlier in the case, the Board had issued a 10 (k) determination adverse to the labor organizations involved, against which (8) (b) (4) (D) charges had been filed. (83 N.L.R.B. 477.) A hearing then took place on the question of whether the respondent unions had committed the unfair labor practice defined in Section 8 (b) (4) (D). Based on that hearing, which did not consider events following the Board's 10(k) determination, the Trial Examiner found that Section 8 (b) (4) (D) had been violated. The Board remanded the case to the Trial Examiner, stating in the course of its order:

"The Respondents contended, inter alia, that they had complied with the Board's 10 (k) determination in this case. No evidence with respect to such compliance or noncompliance was adduced at the hearing before the Trial Examiner.

"We are of the opinion that the intent of Congress was that the General Counsel should allege and prove noncompliance with our 10 (k) determination in 8 (b) (4) (D) proceedings. Accordingly, we shall reopen the record in this case, and re-

then, only a strike or picketing which occurs after a Sec. 10(k) determination adverse to the union engaging in such activities, can violate Sec. 8(b)(4)(D).

It is submitted that this construction of the two sections by the Board is the only proper one that can be made.[16] It is supported not only by the reasons advanced by the Board in the first *Juneau Spruce* case and other decisions, but also by the legislative history of Secs. 10(k) and 8(b)(4)(D).

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mand it to the Trial Examiner to give the General Counsel an opportunity to amend his pleadings and to introduce evidence to sustain his burden of proof." (Footnotes omitted.) Thereafter, following an additional hearing, the Trial Examiner again found that the respondent unions had violated Section 8 (b) (4) (D), basing his finding on a strike called by the union *before* the Board's 10 (k) determination had been made. In reversing the Trial Examiner's finding, the Board said:

"Clearly, the strike *before* the determination cannot prove noncompliance with the determination."

There being no evidence that the strike had continued after the 10 (k) determination, the Board dismissed the complaint.

[16]As the interpretation of the administrative agency charged with the duty of enforcing the legislation, it is entitled to great weight. *New York, New Haven and H.R. Co. v. Interstate Commerce Commission*, 200 U.S. 361; *Shapiro v. United States*, 335 U.S. 1. Particularly is this true with respect to the legislation here under discussion. Sections 401, 402, and 403 of the Act established a joint congressional committee known as the Joint Committee on Labor-Management Relations, a duty of which was to report to Congress on the administration and operation of existing federal laws relating to labor relations. The construction which the Board has placed on Sec. 10(k) has come directly to the attention of Congress through the reports of this committee. (Rep. No. 986, Part 3, 80th Cong., 2d Sess., at page 57.) The continued existence of these sections of the Labor Relations Act in their original state attests to the fact that the Board is carrying out the legislative intent in its administration of Secs. 10(k) and 8(b)(4)(D).

b. Such a construction by the Board fully accords with the intention of Congress as disclosed by the legislative history.

The treatment which the respective houses of Congress gave jurisdictional disputes in the bills which originated in each was vitally disparate. H. R. 3020, the House version of the legislation, outlawed entirely concerted action by labor organizations arising out of jurisdictional disputes.[17] The Senate, however, adopted a different approach. Recognizing that jurisdictional disputes were in a special category and that experience had shown that obstructions to commerce arising from them could best be removed not by outlawing them completely but by a fair adjustment of them, the Senate provided for such an adjustment in its bill, S. 1126. Thus, when the Senate bill was reported to the Senate by its Committee on Labor and Public Welfare, it was made clear that Sec. 10(k) of that bill had been derived from the bill originally

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[17] This was accomplished by the provisions of Secs. 2(15) and 12(a)(3)(A).

Section 2(15) provided as follows:

"The term 'jurisdictional strike' means a strike against an employer, or other concerted interference with an employer's operations, an object of which is to require that particular work be assigned to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class." (1 Leg. Hist. 42-43.)

Section 12(a)(3)(A) provided as follows:

"The following activities, when affecting commerce, shall be unlawful concerted activities: • • •

"(3) Calling, authorizing, engaging in, or assisting——

"(A) any sympathy strike, jurisdictional strike, monopolistic strike, or illegal boycott, or any sit-down strike or other concerted interference with an employer's operations conducted by remaining on the employer's premises." (1 Leg. Hist. 77-78.)

introduced by Senator Morse to deal with jurisdictional disputes.[17a]

Sections 8(b)(4)(D) and 10(k) of S. 1126 provided as follows:

Sec. 8(b)(4)(D): "It shall be an unfair labor practice for a labor organization or its agents * * *

* * * * * * *

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services in the course of their employment * * * (D) for the purpose of forcing or requiring any employer to assign to members of a particular labor organization work tasks assigned by an employer to members of some other labor organization unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work tasks * * *" (1 Leg. Hist. 112-114.)

Sec. 10(k): "Whenever it is charged that any person has engaged in an unfair labor practice

[17a] Senator Morse stated:

"I am very happy that on March 10, in a speech which I am sure my colleagues at the time thought was too long, I laid the foundation for my proposals for amendments to the Wagner Act. At that time I offered S. 858, containing the specific proposals which I recommended in that speech insofar as the Wagner Act was concerned. I am very pleased that in the bill which we are reporting today practically all of the provisions of S. 858 are contained in it plus some refinements of S. 858 which I have developed on the issues since my speech on March 10, 1947." (2 Leg. Hist. 1000-1001.)

S. 858 provided that jurisdictional disputes be dealt with by arbitration.

within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen or to appoint an arbitrator to hear and determine such dispute, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or the arbitrator appointed by the Board *or upon such voluntary adjustment of the dispute,* such charge shall be dismissed. The award of an arbitrator shall be deemed a final order of the Board." (Italics supplied.) (1 Leg. Hist. 130-131.)

Senate Report No. 105 on S. 1126 explained these sections as follows:

"Jurisdictional disputes that constitute unfair labor practices within the meaning of section 8(b)(4)(D) may be heard by the Board or an arbitrator unless within 10 days the parties satisfy the Board that *they have adjusted the dispute or agreed to methods for adjusting it.* If the parties comply with the determination of the Board or the arbitrator appointed by it, *or voluntarily adjust the dispute,* the Board shall dismiss the charge. Finally, the award of the arbitrator is given the same status and force as a final order of the Board, a provision which will avoid the necessity of the Board hearing the dispute if it has designated an arbitrator for that purpose and also will permit the Board to seek enforcement

of the award without further proceedings." (Italics supplied.) (1 Leg. Hist. 433.)

When the conference of the two houses had met, considered the differing versions of the bills they had initially passed, and then reported to their respective houses the bill which subsequently became the Act, House Conference Report No. 510 on H.R. 3020 had this to say with respect to the version finally adopted:

> "The Senate amendment also contained a new section 10(k), which had no counterpart in the House bill. This section would empower and direct the Board to hear and determine disputes between unions giving rise to unfair labor practices under section 8(b)(4)(D) (jurisdictional strikes). The conference agreement contains this provision of the Senate amendment, amended to omit the authority to appoint an arbitrator. If the employer's employees select as their bargaining agent the organization that the Board determines has jurisdiction, and if the Board certifies that union, the employer will, of course, be under the statutory duty to bargain with it." (1 Leg. Hist. 561.)

This legislative history establishes that the view of the Senate concerning the best method with which to deal with jurisdictional disputes prevailed, and that the bill as finally enacted embodied a basic distinction between such disputes and secondary boycotts, concerning which no procedure analogous to that of Sec. 10(k) was included. The emphasis with respect to jurisdictional disputes was on a settlement of the dispute on its merits. Should the parties them-

selves fail to settle the dispute, the determination of the dispute was left with the Board. It was only when a union involved in the dispute failed to comply with the determination of the Board that concerted activities of labor organizations in connection with such a dispute were to become unfair labor practices under the provisions of Section 8(b)(4)(D).

This consideration of the legislative history of the sections of the Labor Relations Act relating to jurisdictional disputes demonstrates conclusively that the Board is correct in holding a Sec. 10(k) determination, and a non-compliance therewith, to be an essential element of a finding on its part that conduct has been an unfair labor practice under Sec. 8(b)(4)(D).

3. Not only Sec. 8(b)(4)(D), but Sec. 303(a)(4) also must be construed in the light of Sec. 10(k), in view of the congressional purpose and statutory plan for dealing with jurisdictional disputes.

The legislative history of the Act does more than support the soundness of the Board's construction of Secs. 8(b)(4)(D) and 10(k), which we have reviewed. It illuminates the over-all plan of the statute for dealing with the problems of jurisdictional disputes, and clarifies the function of Sec. 303(a)(4) within that plan. When the Senate view, that the problem of obstructions to interstate commerce arising out of jurisdictional disputes could best be met by giving the Board authority to arbitrate such disputes on their merits, in order to finally settle them, prevailed over the sweeping position of the House that all activities of labor organizations arising out of such disputes

should be outlawed whenever they occurred, without regard to their equitable settlement, Congress determined as a matter of policy to penalize only such primary activities of labor organizations[18] in jurisdictional disputes as were carried on in the face of a Board determination adverse to the labor organization in question. The Board's correct construction of Sec. 8(b)(4)(D) is based upon that policy. The proper construction of Sec. 303(a)(4) must equally be based upon it. So viewed, all of the provisions of the Act dealing with jurisdictional disputes are consistent with each other and work together to achieve the congressional objective of having such disputes resolved either by the parties or by the Board, whose award Congress intended to bind all parties to the dispute, including the employer. Thus, in Sec. 10(k), the parties to the dispute were given, in the first instance, authority to settle the dispute among themselves.[19] Failing such a settlement, the Board was given authority, under Sec. 10(k), to arbitrate the dispute, and to make an award determining which of the contending labor organizations was entitled to have the employees it represented perform the work in question. For reasons not revealed by Congress, this award of the Board

[18]That is, activities directed against the employer with whom the union was engaged in a dispute.

[19]The pertinent provisions of Sec. 10(k) read:

". . . unless, within ten days after notice that such charge [under Sec. 8(b)(4)(D)] has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. . . . upon such voluntary adjustment of the dispute, such charge shall be dismissed."

See *Manhattan Construction Co., Inc.*, 90 NLRB No. 160, 29 LRRM 1002, Oct. 24, 1951.

was not made directly enforcible by petition to the Courts of Appeals, as was the case with other orders of the Board. Instead, adherence to it was encouraged by providing certain penalties or disabilities for noncompliance. Thus, if a contending labor organization against whom the Board's award had been adverse persisted in seeking the work by picketing the employer after the Board had ruled against it, it subjected itself to a cease and desist order under Section 8(b)(4)(D) and became liable under Section 303(a)(4) for any damages caused by picketing carried on after the award had been made. On the other hand, if the employer refused to abide by the Board's award, the union could seek to enforce it by primary economic action against him, secure from both a proceeding under Section 8(b)(4)(D) and an action for damages under Section 303(a)(4).

Under the statute as finally passed, economic action against a primary employer,[20] by which a union sought to protect the amount and types of work performed by the employees whom it represented, was not made illegal per se, as the House bill would have done. On the contrary, such action remained within the category of lawful primary strikes, *subject to becoming an unfair labor practice under Sec. 8(b)(4)(D) and actionable under Sec. 303(a)(4) if persisted in after a Board determination under Sec. 10(k) adverse to the union involved.*[21]

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[20]That is, an employer with whom a union was directly engaged in a dispute over work assignments.

[21]Recognizing that the public interest might be adversely affected by a union's primary activities to protect a work assign-

In the light of the over-all statutory scheme and congressional purpose and policy just outlined, the Board's construction of Sec. 8(b)(4)(D) in accordance with it, and the express congressional intention to make actionable under Sec. 303(a)(4) only such conduct as was made unfair by Sec. 8(b)(4)(D), it follows without question that an essential element of a cause of action under Sec. 303(a)(4) is proof that the conduct defined therein followed and was adverse to a Sec. 10(k) determination by the Board in the particular jurisdictional dispute. Yet the Court of Appeals held squarely to the contrary. We shall demonstrate that the reasons advanced by it for its holding are untenable, and that its judgment upholding that of the trial court accordingly must be reversed.

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ment, which occurred before a Board award under Sec. 10(k) had determined the merits of the dispute, Congress provided the General Counsel of the Board, in Sec. 10(l) of the Labor Relations Act, with discretionary power to seek injunctions against such activities in the district courts of the United States immediately after a charge is filed under Sec. 8(b)(4)(D), and before the Board's determination under Sec. 10(k) is made. The provisions of Sec. 10(l) are set forth in the Appendix, pages iv to v. The parts of Sec. 10(l) pertinent here provide:

> "... In situations where such [injunctive] relief is appropriate, the procedure specified herein shall apply to charges with respect to Sec. 8(b)(4)(D)."

Congress further provided, in Secs. 8(b)(4)(A), 10(l) and 303(a)(4) of the Act, for unfair labor practice proceedings, injunctions, and suits for damages, should a union involved in a jurisdictional dispute extend its activities to secondary employers. These sanctions against secondary boycott activities in connection with a jurisdictional dispute came into play whether such secondary activities occurred before or after a determination of the dispute by the Board under Sec. 10(k), since secondary boycotts were illegal per se, whenever they occurred.

B. THE RULING OF THE COURT OF APPEALS TO THE CONTRARY LEADS TO A FRUSTRATION OF CONGRESSIONAL PURPOSE AND MAKES THE VARIOUS PROVISIONS OF THE ACT DEALING WITH JURISDICTIONAL DISPUTES INCONSISTENT WITH EACH OTHER.

The Court of Appeals held that proof of non-compliance by a union with a Sec. 10(k) determination was not an essential element of a cause of action under Sec. 303(a)(4), or to use its own language, "was not a jurisdictional prerequisite to maintaining the instant cause of action." (R. 1134.) It rejected the position of the petitioner as not sustained by either the legislative history or the plain language of Sec. 303(a)(4). (R. 1134.)

It did not dispute, or even mention, the legislative history of the Act heretofore cited to support the view of the petitioners concerning the over-all approach adopted by Congress for the resolution of jurisdictional disputes. Nor did it deal with the legislative history cited by petitioners to establish that Sec. 303(a)(4) was intended to make actionable only such conduct as was made unfair by Sec. 8(b)(4)(D). It avoided a determination of the correctness of the interpretation by the Board of Sec. 8(b)(4)(D) as unnecessary to its decision in the present case. It is evident, then, that the Court of Appeals did not dispose of the arguments advanced by petitioners by answering them, but, on the contrary, ignored them.

Before considering the reasons advanced by the Court of Appeals to support its view of the meaning of Sec. 303(a)(4), we shall consider the mischief which its holding performs.

In considering the essential elements of a cause of action under Sec. 303(a)(4), the Court of Appeals stated:

> "As we view this Section of the Act, a plaintiff, to maintain an action for damages, is required to show that a labor organization has engaged in or induced the employees of any employer to engage in a strike, etc., and that an object of such conduct was to force or require any employer to assign particular work to employees in a particular labor organization or group rather than to employees in another group; and further that the employer is not failing to conform to a Board order or certification determining the bargaining representative for employees performing such work. All of these requirements were adequately pleaded and proved in the instant case." (R. 1130-1131.)

This holding would lead to the following results, among others:

(a) A Board determination could be made under Sec. 10(k) that the employees represented by one union, rather than the employees represented by another, were entitled to perform particular work for an employer. Such a determination would not depend on a prior certification of the union whose rights to the work were upheld. It could be based on such criteria as the "custom in the trade and in the area, the constitutions and peace treaties of the contending labor organizations themselves, the technological evolution of

the disputed tasks, and [the] like * * *",[22] or on the construction of collective bargaining agreements held by rival unions with the same employer.[23] If the employer refused to abide by the Board's determination, the union's only effective recourse would be to picket his premises to require him to abide by it.[24] It could not file an unfair labor practice charge against him, for an employer's refusal to abide by a Sec. 10(k) determination of the Board is not made an employer unfair labor practice. Yet, despite the fact that picketing to enforce a Sec. 10(k) certification is not an unfair labor practice, if the interpretation of Sec. 303(a)(4) made by the Court of Appeals were followed, the employer could sue and collect damages from a union for picketing caused by *his* failure to comply with the Board's determination of the dispute.

The view of the statute adopted by the Court of Appeals thus removes the only effective assurance that employers will abide by awards of the Board resolving jurisdictional disputes on their merits. It makes the decisions of the Board under Sec. 10(k) binding on unions, but only advisory as to employers, and hence defeats the object of

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[22] All of which are mentioned as guides to the Board in *Juneau Spruce Corp.*, 82 NLRB 650 (1949), dissenting opinion of Member Murdock, at footnote 21.

[23] This was the chief basis for the Board's determination in *Winslow Bros. and Smith Co.*, 90 NLRB 1379 (1950).

[24] As has already been indicated, under the Labor Relations Act no provision is made for direct enforcement by the Board through the Courts of Appeals of its Sec. 10(k) awards.

Congress to make the Board's determination under that Section binding upon all of the parties to the dispute.

(b) An employer could re-assign work done by employees represented by one labor organization to the employees represented by another, without any justification therefor. In such a case, the Board might find that the first group of employees were rightfully entitled to continue to perform the particular work. Especially would this be the case if the labor organizations themselves, by a jurisdictional pact, had previously agreed to the division of work originally existing. The first labor organization might picket the employer to correct the inequitable situation. The employer could prevent a Board determination of the dispute by the simple expedient of refusing to file charges under Sec. 8(b)(4)(D) against either labor organizations. Instead, under the view of Sec. 303(a)(4) adopted by the Court of Appeals, he could sue the union for damages, and prevail. He would thus be rewarded for creating the very obstruction to commerce which the Act is designed to prevent.

That Congress did not intend such absurd results to flow from Sec. 303(a)(4) is manifest. The Section was not created to nullify the results to be achieved by the Board under Sec. 10(k). It was designed to implement the remedies available to employers against unions which persisted in seeking particular work for

employees they represented *after an adverse Board determination under Sec. 10(k).* Conversely, it could hardly have been intended to create a cause of action on behalf of employers who themselves refused to abide by a Board determination under Sec. 10(k), or *who refused to avail themselves of the machinery of the Board* which Congress intended was to be employed in the first instance in order to achieve a determination of the dispute binding on all the parties.

The Court of Appeals did not deny that such absurd and incongruous results would follow in other cases from its construction of Sec. 303(a)(4). It merely pointed out that such results could not follow in the present case because, under the facts of this case, the Board could not fail to make a determination under Sec. 10(k) that was adverse to petitioners here. The difficulty with this attempted explanation of the Court of Appeals is that its decision concerning the meaning of Sec. 303(a)(4) will apply to all cases under the Section, including those in which a union's claim that the employees it represents are entitled to particular work has been upheld by the Board.

The Court of Appeals suggested further that the unreasonable results outlined above would not follow from its construction of Sec. 303(a)(4) unless the Board actually did have authority under Sec. 10(k) to determine which employees are entitled to disputed work. In making that suggestion, the Court undoubtedly was mindful of the position respondent urged upon it, that the Board had no such authority under

Sec. 10(k). Since respondent presented the same position to this Court in its brief opposing the grant of writ of certiorari,[25] it will be discussed and disposed of here.

We turn then to respondent's position concerning the meaning of Sec. 10(k) of the Labor Relations Act, and the Board's function thereunder. As presented to the Court of Appeals, it was as follows:

The Board's duty under Sec. 10(k) "is not to *decide between union claims*, which may be on certification, interunion work-defining agreements, traditional jurisdiction, *et cetera*, for which a skilled arbitrator would be needed. Instead, the questions for decision are simply (1) To whom has the employer assigned the work in issue? and (2) Is that assignment of work in contravention of a certification of the National Labor Relations Board under Sec. 9(c) of the National Labor Relations Act?"[26] If the Board's answer to the second question is in the negative, according to respondent, the Board *must* find that the organization to whom the employer has assigned the work is entitled to it. The Board, says appellee, has no discretionary authority whatsoever under Sec. 10(k), and the inquiry it makes under the section is a mere formality. In fact, it is contended, the inquiry which it can make under Sec. 10(k) is limited to and identical with that which it must make in determining whether Sec. 8(b)(4)(D) has been violated. Hence,

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[25]Respondent's Brief Opposing Petition for Writ of Certiorari, pp. 9-10.

[26]Respondent's Brief, Court of Appeals, p. 21.

Sec. 10(k) not only fails to give the Board authority to arbitrate a jurisdictional dispute on the merits, but is in effect superfluous, since it adds no authority to that given the Board under Sec. 8(b)(4)(D). Under this view of Sec. 10(k), respondent argues that, absent a pre-existing certification of the Board under Sec. 9(c), the issue of who is entitled to the work never arises in a hearing under Sec. 10(k), or in an unfair labor practice proceeding under Sec. 8(b)(4)(D). Thus, respondent claims, a situation can never occur in which a union has had disputed work awarded by the Board to employees it represents. That being the case, says respondent, no case could ever arise in which a union could be found liable under Sec. 303 (a)(4) for picketing to compel an employer to abide by a Sec. 10(k) award of the Board.

To support this view of the meaning of Sec. 10(k), respondent relies on the process of amendment to which Sec. 8(b)(4)(D) was subjected before it emerged in final form. According to respondent, these amendments somehow changed the intention of Congress that jurisdictional disputes should be arbitrated on their merits, and substituted for such intention the view that once an employer had assigned work to employees represented by a particular labor organization, that assignment was just and proper. Respondent thus argues, in effect, that even though the language of Sec. 10(k) *as passed* clearly supports the authority of the Board to arbitrate a jurisdictional dispute, its language must be ignored because of the amendments made to Sec. 8(b)(4)(D) during its

progress through Congress. In alleged support of this position, respondent points to Board decisions under Sec. 10(k), the language of which indicates that in some cases the employers' assignment of work will be considered determinative of the question of who is entitled to work.[27]

The argument of respondent cannot be accepted for many reasons. In the first place, it asks this Court to ignore the existence of Sec. 10(k), in violation of the elementary rule that a statute should be construed so that effect is given to all its provisions.[28] Secondly, respondent's position concerning Sec. 10(k), and the Congressional intent regarding jurisdictional disputes, is untenable in the light of the legislative history of the Section. Thus, the authoritative explanation of the meaning of Sec. 10(k) in the bill as passed given by the managers of the conference on the part of the House[29] clearly demonstrates the intention of Congress to give the Board authority under Sec. 10(k) to arbitrate jurisdictional disputes, and to determine which labor organization has jurisdiction of the disputed work.[30] In addition, the remarks of Senator Morse, made during the Senate debate on the

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[27] An example of such language appears in *Los Angeles Bldg. and Construction Trades Council*, 83 NLRB 477 (1949).

[28] *Sutherland, Statutory Construction*, 3rd Ed. (Horack), Vol. 2, Sec. 4705.

[29] The explanation is reprinted in full at page 35, *supra*.

[30] This is established by the following sentence in the statement: "If the employer's employees select as their bargaining agent *the organization that the Board determines has jurisdiction* and if the Board certifies that union, the employer will, of course, be under the statutory duty to bargain with it." (Italics supplied.) (1 Leg. Hist. 561.)

Conference Bill in the form in which it finally became law, make it clear that Sec. 10(k) as finally passed was intended by Congress to give the Board full discretionary authority to arbitrate jurisdictional disputes.[31] The fact that the Senator, whose own bill S. 858 was the genesis of Secs. 8(b)(4)(D) and 10(k), recognized that the bill as passed gave the Board the same authority to settle jurisdictional disputes as would have been exercised by an arbitrator under his bill, and that his views were not disputed by any other senator, again refutes the respondent's contention. These two excerpts from the legislative history

[31] Senator Morse stated:

"In this connection we must examine, too, the provisions of the bill requiring the Board to determine:

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"Second. What are proper work-task allocations as between unions in jurisdictional strikes.,

"The Board must perform both of these tasks without the assistance of economic analysts, for under section 4 (a) of the bill it is forbidden to hire such employees. This is much like requiring the Veterans' Administration to provide hospital and medical care for veterans but forbidding them to employ doctors and nurses.

"I am especially disturbed about the amendment made in conference which requires the Board itself, rather than an arbitrator, to decide these jurisdictional disputes. I think the provision is completely unworkable. Under this provision the Board will have to hear and decide the merits of the disputes in the motion-picture industry and the controversy of over 50 years' standing between the teamsters and brewery workers unions, to mention only a few.

"The provision in the Senate bill authorizing the Board to appoint an arbitrator to settle jurisdictional disputes over work assignments was taken from the bill I introduced, S. 858.

"One of the major reasons for suggesting that an arbitrator, rather than the Board itself, handle these problems was that time is of the essence and the regular procedure of the Board is not an effective remedy for these cases. I certainly agree that jurisdictional disputes must be settled, but I am satisfied that the procedure now set up in the bill is not an effective solution." (2 Leg. Hist. 1554.)

demonstrate that after Secs. 8(b)(4)(D) and 10(k) had been amended *into their final form,* both houses of Congress fully intended to give the Board authority to arbitrate under Sec. 10(k).

In the third place, respondent cannot deny that the Board itself, whose interpretation of the Act is entitled to great respect,[32] has rejected its position concerning the meaning of Sec. 10(k). It did so not only by its direct ruling in the case of *Juneau Spruce Corporation,* 82 NLRB 650 (1949),[33] but by its decisions in all subsequent cases. Furthermore, despite respondent's assertion that "the Board does not consider itself empowered in a 10(k) proceeding to make any affirmative award of disputed work",[34] the Board made just such an award in the case of *Winslow Bros. & Smith Co.,* 90 NLRB 1379. There, the disputed work had already been assigned by the employer to an employee represented by the Teamsters Union. Despite this fact, and the absence of a pre-existing 9(c) certification on behalf of either the Teamsters or the Fur and Leather Workers Union, the other union involved, the Board held that the work should be reassigned to an employee represented by the Fur and Leather Workers Union.[35]

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[32]See note 16, supra, p. 31.

[33]See pp. 27-28, supra.

[34]Respondent's Brief Opposing Petition for Writ of Certiorari, p. 10.

[35]The Board's "Determination of Dispute" in that case read as follows:

"1. The job of operating the cab and trailers for intraplant moving of materials among the buildings of the Winslow Bros. & Smith Co., plant at Norwood, Massachusetts, is included in the production and maintenance employees unit presently

The *Winslow Bros. & Smith Co.* case offers an excellent illustration of the frustration of Congressional purpose which would result if respondent's views concerning the meaning of Sec. 10(k) were adopfed. For, under respondent's reasoning, the mere fact that the work had already been assigned by the employer in that case would constitute a determination of who was properly entitled to the work. If the Board had conceived its inquiry under Sec. 10(k) to be that claimed by respondent, it would have been compelled to find that the employees represented by the Teamsters were entitled to perform the disputed work task, irrespective of whether such a result would have accorded with the equities, or encouraged harmonious labor-management relations. By its decision, the Board recognized the Congressional intention that the power of employers to assign work to whomever they pleased should yield to the judgment of the Board, based as it was on the interests of all the parties and the public, and not merely on that of the employer.

The respondent fails to see that by its treatment of jurisdictional disputes, Congress intended to limit what respondent still insists is the employer's plenary power to assign work. Such a restriction of employer authority undoubtedly is unpalatable to some employers. It may be said that such a restriction is no more palatable to some employers than was the re-

represented by Local 26, International Fur and Leather Workers Union of the United States and Canada, and not in the truck drivers unit now represented by Local 25, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL." (90 NLRB 1379, at 1385.)

striction contained in the original Section 7 of the Wagner Act on the employers' theretofore unlimited power to hire and fire. In each instance, however, Congress has exercised its judgment that the restriction of employer power in question is justified by the power of Congress to regulate labor-management relations in the public interest.

All of the foregoing effective refutes respondents' views with respect to Sec. 10(k). More than that, it demonstrates the error in respondent's position that the question of who is entitled to the work is never an issue in an action under Sec. 303(a)(4). For, if that question is one that must be decided by the Board before conduct can become unfair under Sec. 8(b)(4)(D), it is equally necessary that it be determined by the Board before conduct can become actionable under Sec. 303(a)(4).

Having demonstrated that the construction placed upon Sec. 303(a)(4) by the Court of Appeals will lead to absurd results completely at variance with the purpose of Congress, we turn to a consideration of the merit of the reasons assigned by the Court of Appeals for its holding. As we have indicated, these are: First, that the legislative history of Sec. 303(a)(4) does not support the position of petitioners; and second, that the plain language of Sec. 303(a)(4) is inconsistent with it. These will be discussed in order.

1. The legislative history of Sec. 303 is completely consistent with the construction of the Section urged by petitioners, and has been misconstrued by the Court of Appeals.

Sec. 303 of the Act, of which Sec. 303(a)(4) is a part, was offered by Senator Taft as a substitute for an amendment proposed by Senator Ball to S. 1126, the Senate version of the legislation, during the Senate debate on that bill.[36] As we have already indicated, its purpose was to give employers an action for damages for conduct of labor organizations made unfair labor practices by the provisions of Sec. 8(b)(4) of the Labor Relations Act.

The debate on the amendment centered largely on the question of the wisdom of permitting the courts and the Board to deal simultaneously with the same subject matter, the courts in order to determine whether an action for damages would lie, and the Board in order to decide whether an unfair labor practice had been committed.[37] It is true, as the Court of Appeals indicates, (R. 1134) that nowhere in the debate on the Taft amendment is there to be found any indication of an intent to have the civil actions provided for in Sec. 303 await the outcome of proceedings of the Board to determine whether unfair labor practices have been committed. The debate further indicates, as the Court states, that "[t]he plain purpose was to provide direct court action by the injured party as a further deterrent against engaging

[36]The Taft amendment was offered after the Ball amendment had been defeated. (2 Leg. Hist. 1369-1370.)

[37]See, for example, the remarks of Senator Morse in opposition to the Taft amendment. (2 Leg. Hist. 1358.)

in the prohibited conduct". (R. 1134.) The fact is, however, that nothing in the debate on the Taft amendment is inconsistent with the position of petitioners concerning the meaning of Sec. 303(a)(4), and the Court of Appeals is wrong in drawing such a conclusion. It arrives at such an erroneous conclusion by confusing the question of what conduct is prohibited by Sec. 303(a)(4), with the question of when an action can be brought under the Section.

We would be the first to affirm the position that nothing in the Act requires actions for damages under Secs. 303(a)(1), (2), and (3), to await the issuance by the Board of cease and desist orders under Secs. 8(b)(4)(A), (B) and (C). This is equally true under Sec. 303(a)(4). Such actions can undoubtedly be brought before the Board has issued a cease and desist order under Sec. 8(b)(4)(D). Thus, petitioners' position does not require that an actior under Sec. 303(a)(4) be postponed until the Board has issued a cease and desist order under Sec. 8(b)(4)(D). Petitioners contend merely that an action under 303(a)(4) must necessarily await a determination of the Board under Sec. 10(k) for the reason that if brought prior to such a determination it would be lacking in an essential element necessary to make the conduct, which was the subject of the action, prohibited conduct, namely, that it was in non-compliance with a determination of the Board under Sec. 10(k).

Once the determination of the Board has issued under Sec. 10(k), and a union has failed to comply

with it, such union subjects itself to a simultaneous proceeding before the Board and in the courts, leading to a cease and desist order on the one hand, and a judgment for damages on the other. The lack of reference in the debate on the Taft amendment to the relation between a determination of the Board under Section 10(k) and a cause of action under Sec. 303 (a)(4) does not make the legislative history of the amendment inconsistent with our view of the meaning of Sec. 303(a)(4). It means only that the relationship between Sec. 10(k) and Sec. 303(a)(4) was not material to the question of whether unfair labor practice hearings should proceed simultaneously with damage actions based on the same type of conduct. That question was common to all of the subdivisions of Sec. 303, including Sec. 303(a)(4). The relationship to Sec. 10(k), however, was unique to Sec. 303 (a)(4).[38] It is apparent, then, that the Court of Appeals was in error in its conclusion that the legislative history of Sec. 303 was inconsistent with the construction of Sec. 303(a)(4) advanced by petitioners.

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[38]This result followed from the differing Congressional treatment under the Act of jurisdictional disputes on the one hand, and secondary boycotts on the other. Congress determined to deal with the problem of secondary boycotts by making the ban on them complete, irrespective of the merits of the dispute giving rise to them. (See the remarks of Senator Taft at 2 Leg. Hist: 1106.) Accordingly, no procedure was included in the Labor Relations Act under which the Board was given authority to settle the dispute out of which a secondary boycott arose, and labor unions engaging in them were made subject unqualifiedly to unfair labor practice proceedings, and to actions for damages.

2. The failure of Congress expressly to relate Sec. 303(a)(4) to Sec. 10(k) is explainable by the origin of the former section.

The Court of Appeals declared that the construction of Sec. 303(a)(4) urged by petitioners was not supported by the "plain language" of the Section. (R. 1134.) It is true that its language does not expressly provide that the conduct defined in it should become actionable only when carried on in the face of a determination of the Board under Sec. 10(k) adverse to the union engaging in it. But neither, for that matter, does the language contained in Sec. 8(b)(4)(D), standing alone, define the corresponding unfair labor practice which Congress intended to create. In that fact lies the very reason for rejecting the literal terms of Sec. 303(a)(4) as determinative of the conduct made actionable by it. It is reasonable to believe that Senator Taft, the author of the amendment which became Sec. 303 of the Act, erroneously assumed that the unfair labor practices defined in S. 1126[39] would be made actionable under Sec. 303 simply by incorporating into Sec. 303 the exact language used in Sec. 8(b)(4) of the Senate bill. He overlooked completely the fact that, unlike the other unfair labor practices involved, the unfair labor practice dealing with jurisdictional disputes was fully defined, not simply by the language in Sec. 8(b)(4)(D), but by its language taken together with the language of Sec. 10(k). Thus fully defined, the intention of Congress to make primary activities of labor organizations in connection

[39]The bill originally reported by the Senate Committee on Labor and Public Welfare.

with jurisdictional disputes unfair labor practices only when they occurred under certain conditions is completely carried out. By failing to carry over into Sec. 303 language which would have made such activities actionable only under the same conditions, the framer of the amendment failed to carry out his intention to define as actionable under Sec. 303(a)(4) the same conduct which was proscribed as an unfair labor practice in the provisions of S. 1126, as reported.

There is evidence from which to conclude that had the provisions of Sec. 303 been given more careful attention, the omission under discussion would never have occurred. As the debate in the Senate shows, inadequate attention was given to the problem of drafting the language of the Taft amendment so as to make it consistent with the unfair labor practice definitions from which it was taken. During the debate, Senator Morse stated:

> "If the Senator will indulge me, may I say further that I think all the discussion, the amendments that are now proposed, and the corrections that have been made here on the floor of the Senate to the pending amendment, show that here is a problem that ought to be referred for further study to the committee proposed in another section of the committee bill. I think the pending Taft amendment is a perfect example of hastily devised legislation. I think the problem involved in it ought to go back to committee. I think we ought to take the committee bill and stop muddying the water, so to speak, by adding more and more amendments to it." (2 Leg. Hist. 1380-1381.)

The failure of Congress to conform the language of Sec. 303(a)(4) to its intention in adding the Section, and to expressly relate Sec. 303(a)(4) to the determination of the dispute provided for by Sec. 10(k), is thus seen to be explainable by the origin of the former Section. This demonstrates even more clearly the absence of reason in the reliance by the Court of Appeals on the so-called "plain language" of the Section. In asking the Court of Appeals to construe the Section in accordance with their contention, petitioners were not seeking to have the Court rewrite the statute "* * * to give an effect to the law which may be supposed to have been designed by the Legislature * * *";[40] on the contrary, they were asking the Court to recognize that the express intention of the Legislature had not been fully embodied in the language of the Section, because of the circumstances under which it was added to the statute.

3. Even if the language of Sec. 303(a)(4) is to be considered plain, its literal meaning must yield to the general purposes of the statute to avoid the unreasonable results that would otherwise follow.

An even more compelling reason existed for the Court of Appeals to reject the so-called "plain language" of the Section.[41] As we have pointed out, the

[40] *Denn v. Reid*, 10 Pet. 524, 527.

[41] Even the assumption of the Court of Appeals that the language of Sec. 303(a)(4) is clear and unambiguous is unwarranted. The Section provides that the activities enumerated in it are not unlawful, if the "employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work." It is to be noted at once that, unlike Secs. 303(a)(2) and 303(a)(3) (reprinted at Appendix, p. vi), which refer specifically to cer-

construction reached by the Court under it leads to results which frustrate the Congressional design to have jurisdictional disputes resolved by a determination of them on their merits,[42] and the Congressional intention to make the Board's determination of such disputes under Sec. 10(k) binding upon all parties to the dispute, including the employer.[43] Under such circumstances, it was incumbent upon the Court to look "beyond the words to the purpose of the Act".[44] It should have refused, to use its own words in another portion of its opinion, "to construe the literal language of [Sec. 303(a)(4)] in a manner which would disregard and thereby frustrate the obvious purpose and policy of the legislation involved and produce unreasonable or absurd results." (R. 1124.) In support of this principle, the Court of Appeals cited and quoted at length from the opinions of this Court in *U.S. v. American Trucking Ass'ns.*, 310 U.S. 534, and *Talbot v. Silver Bow County*, 139 U.S. 438. Its failure to apply the principle of these cases to Sec. 303(a)(4) of the Act, while applying them without warrant to Sec. 303(b) of the Act, when considering the status of the trial court in this case,[45] is indefensible. Had the Court of Appeals applied this cor-

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tifications of the Board under the provisions of Sec. 9 of the Labor Relations Act, the "order or certification" of the Board mentioned in Sec. 303(a)(4) is not made referable to a particular provision of the Labor Relations Act. This ambiguity alone belies the statement of the Court of Appeals that the language of Sec. 303(a)(4) is clear.

[42] See pp. 41-42, supra.

[43] See pp. 43-44, supra.

[44] *U.S. v. American Trucking Ass'ns*, 310 U.S. 534, 543.

[45] See pp. 77-78, infra.

rect principle to Sec. 303(a)(4), it could not have failed to hold that the conduct defined by its terms does not become actionable unless it occurs after, and in the face of, an adverse Board determination under Sec. 10(k).

In its Brief Opposing Petition for Writ of Certiorari, respondent advanced the theory that conduct within the terms of Sec. 8(b)(4)(D), standing alone, is an unfair labor practice whenever it occurs, even though the Board will dismiss a complaint charging the occurrence of such an unfair labor practice, unless the conduct in question occurs after and in noncompliance with a Board determination under Sec. 10(k). The action of the Board in dismissing the complaint, says respondent, does not mean there never was a violation of Sec. 8(b)(4)(D). The dismissal by the Board, according to respondent, is comparable to the condonement of an offense, or the refusal of an injunction because the wrongful acts have been discontinued. From this it follows, claims the respondent, that the conduct defined by the terms of Sec. 303(a)(4) is unlawful whenever it occurs.[46]

It would be idle to answer respondent's theory by engaging with it in a quibble about whether, when the Board dismisses a complaint in a case such as *Westinghouse Electric Corp.*, 94 NLRB No. 63, 28 LRRM 1058,[47] it is merely condoning an unfair labor practice already committed or holding that none was

[46]Respondent's Brief Opposing Petition for Writ of Certiorari, pp. 11-12.

[47]Discussed at pp. 30-31, supra.

ever committed. The complete answer to this contention of respondent, as to all others advanced by it, is furnished by looking again at the basic congressional purpose and design in dealing with jurisdictional disputes. Congress intended the Board under Sec. 10(k) to resolve such disputes on their merits, i.e., to arbitrate them, and further intended the Board's decision to be binding on all the parties to the dispute, including the employer. It made unions which failed to comply with such determinations of the Board, and persisted in seeking the disputed work, subject to actions for damages and cease and desist orders for such activities as occurred following the determination. If the employer refused to comply, he could not be sued for damages or forced to comply by the Board. He could, however, be picketed by the union in whose favor the Board had ruled, which union would then be immune from damage actions by the employer and cease and desist orders by the Board. Such activities, under such circumstances, were to become protected concerted activities, to use a phrase often employed in connection with the Act.[48]

The respondent's refusal to recognize the obligation of an employer to comply with a Board's Sec. 10(k) determination leads it to a view of the statute under which the only effective guarantee that an employer would so comply is removed. If, as claimed by respondent, peaceful picketing for the object defined by Sec. 303(a)(4) is unlawful and actionable whenever it occurs, then it is unlawful even though carried

[48]See pp. 37-38, supra.

on to compel an employer to comply with a determination of the Board under Sec. 10(k), and to reassign work in accordance with such award. Any compulsion upon the employer to comply is effectively removed, since he can sue the picketing union under Sec. 303 (a)(4) for any damages he may suffer. It is accordingly apparent that the theory of respondent concerning Sec. 303(a)(4) must be rejected as incompatible with the goal of the statute to have employers, as well as unions, compelled to abide with the rulings of the Board under Sec. 10(k).

Once it is seen that only such conduct as follows and is in non-compliance with the Board's determination of a jurisdictional dispute under Sec. 10(k) is actionable under Sec. 303(a)(4), it becomes clear that the trial court erred in permitting the jury to assess damages for the picketing of Local 16 which occurred prior to the Board's determination of the dispute in this case on April 1, 1949 (82 NLRB 650).[49] The judgment of the Court of Appeals affirming the award to respondent of damages for conduct that preceded the Board's determination under Sec. 10(k) was erroneous, and should be reversed and remanded, with directions that the judgment of the trial court be vacated.[50]

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[49] Under Instruction No. 5, the jury was permitted to assess damages for picketing during the period from April 10, 1948, to April 27, 1949. (Tr. 50-51.) Only 27 days of this period of more than a year followed the Sec. 10(k) determination of the Board in this case.

[50] It is impossible to segregate from the present judgment the damages to which the respondent might be entitled for the 20 odd days of picketing which followed receipt of notice by petitioners of the Sec. 10(k) determination adverse to Local 16.

II.

THE COURT OF APPEALS ERRED IN HOLDING THAT THE DISTRICT COURT FOR THE TERRITORY OF ALASKA IS A DISTRICT COURT OF THE UNITED STATES, AND THUS PERMITTED TO STAND ERROR PREJUDICIAL TO PETITIONERS.

Sec. 303(b) of the Act provides that persons injured in their business or property by reason of alleged violations of Sec. 303(a) thereof may sue therefor "in any *district court of the United States*[51] subject to the limitations and provisions of Sec. 301 hereof without respect to the amount at controversy, or in any other court having jurisdiction of the parties * * *"

The court below held that the trial court correctly proceeded on the assumption that it was a "district court of the United States".[52] This erroneous assumption of a status it did not have led the trial court into serious error which was not corrected in the court below.

A. THE DISTRICT COURT FOR THE TERRITORY OF ALASKA IS NOT A DISTRICT COURT OF THE UNITED STATES.

The phrase "district court of the United States" having for many years had a "definite and restricted meaning", *International Longshoremen's etc. Union*

[51] Italics supplied.

[52] That the trial court did so proceed is manifest from its order denying International's motion to quash service (T.R. 14, 21-22), from its order overruling petitioners' demurrer (T.R. 21-22), from the opinion it delivered in connection with the said order (*Juneau Spruce v. International Longshoremen etc.*, 83 F. Supp. 224), and from the instructions it gave to the jury on the question of agency. (T.R. 49.)

v. Wirtz, 9 Cir., 170 F. 2d 183, 185, it must be presumed that Congress intended that meaning in 1947 when it used that phrase in Sec. 303(b) of the Act. (*Old Colony etc. v. Commissioner,* 284 U.S. 552; *Deputy v. DuPont,* 308 U.S. 488; *United States v. Stewart,* 311 U.S. 60; *Shapiro v. United States,* 335 U.S. 1.)

The meaning which the phrase in question had received by 1947 excluded from its scope the district courts for the territories, including the District Court for the Territory of Alaska.

Mookini v. United States, 303 U.S. 201, considered the status of the District Court for the Territory of Hawaii (a court in many respects analogous at that time in its creation and jurisdiction to the District Court for the Territory of Alaska). The precise problem was whether the Criminal Appeals Rules promulgated pursuant to the Act of March 8, 1934, 48 Stat. 399, applied to the District Court for the Territory of Hawaii. The rules themselves provided that they were applicable to "District Courts of the United States". Although there was no "policy" reason why criminal appeals from Hawaii should be treated differently than any other criminal appeals, this Court held that the District Court for the Territory of Hawaii was not a "District Court of the United States" within the meaning of the rules.

> "The term 'District Courts of the United States' as used in the rules, without an addition expressing a wider connotation, has its historical significance. It describes the constitutional courts created under Article III of the Constitution. Courts

> of the territories are legislative courts, properly speaking, and are not District Courts of the United States. *We have often held that vesting a territorial court with jurisdiction similar to that vested in the District Courts of the United States does not make it a 'District Court of the United States'.*[53] Reynolds v. United States, 98 U.S. 145; In re Mills, 135 U.S. 263; McAllister v. United States, 141 U.S. 174; Stephens v. Cherokee Nation, 174 U.S. 445; Summers v. United States, 231 U.S. 92; United States v. Burroughs, 289 U.S. 159." (303 U.S. 201, at 205.)

This decision was applied to the District Court of the Panama Canal Zone in *Schackow v. Canal Zone,* 5 Cir., 104 F. (2d) 681, and was substantially followed as far as the District Court of Puerto Rico is concerned in *Puerto Rico etc. v. Colom,* 1 Cir., 106 F. (2d) 345. See, also, *Balzac v. Porto Rico,* 258 U.S. 298.

The cases directly involving the District Court for the Territory of Alaska indicate a similar result.

The first case on the question of the nature of the court in Alaska is *McAllister v. United States,* 141 U.S. 174. This case arose on the petition of McAllister, who had been appointed a judge of the District Court for the Territory of Alaska, to recover his wages after his removal from office by the President. He relied upon Rev. Stat. 1768, which provided that judges of the "courts of the United States" could

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[53] Italics supplied.

not be so removed. Again, although no reason of "policy" suggested itself for distinguishing a federal judge sitting in Alaska from one sitting within the territorial limits of the nation, and *although the Alaska court had the same jurisdiction as a district court of the United States,* this Court held that the District Court for the Territory of Alaska was not a "court of the United States" within the meaning of the revised statute in question, and consequently the claim for the payment of salary was denied.[54]

Thus, when Congress used the phrase "district court of the United States" in Sec. 303(b), it was using a term having a definite and fixed meaning, which excluded from its purview the District Court for the Territory of Alaska as well as certain other territorial courts. As a matter of fact, it is probable that Congressional realization that the phrase did not embrace these territorial courts motivated the conferring of jurisdiction upon "any other court having jurisdiction of the parties." Thus in those territories where there was not a "district court of the United States", the remedies provided by Sec. 303 could be enforced in the territorial courts of general jurisdiction.[55]

There are many examples from Congressional legislation which demonstrate that over the years Congress

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[54]To the same effect with respect to the Alaska court, see *In re Cooper*, 143 U.S. 472; *Coquitlam v. United States*, 163 U.S. 346, and *Carscadden v. Territory of Alaska*, 9 Cir., 165 F. (2d) 377.

[55]However, as we will indicate below, there are substantial differences with respect both to procedure and substance, depending on the court in which the action is brought.

has been aware of the distinction between courts in the territories and those which are truly "district courts of the United States". An example will suffice to make the point here.

In 1946, just one year before it enacted the statute here in question, when Congress desired to apply the Federal Rules of Criminal Procedure to the courts in the territories, it specifically so stated. In 18 U.S.C.A. [Old] 687, it provided that the Supreme Court should have the power to prescribe rules of criminal procedure "in District Courts of the United States, including District Courts of Alaska, Hawaii, etc., etc." And Rule 54(a)(1) of the Federal Rules of Criminal Procedure specifically provided that the Rules applied to all criminal proceedings "in the District Courts of the United States, which include the District Courts of the United States for the District of Columbia, the District Court for the Territory of Alaska, the United States District Court for the Territory of Hawaii, etc., etc."

With this statutory and case background, it is perfectly apparent that had Congress intended the trial court to have jurisdiction over suits brought under Sec. 303 of the Act as a district court of the United States, it would not have used the phrase "any district court of the United States" without more. On the contrary, it would have said, as it did in the other situations referred to above, "any District Court of the United States, including the District Court for the Territory of Alaska, etc., etc."

The failure to make a specific reference to the District Court for the Territory of Alaska can only mean, in view of the foregoing, that Congress did not intend that court to have jurisdiction of suits brought under Sec. 303 as a district court of the United States.

Perhaps the most definitive illustration of this point is to be found in the new Judicial Code adopted in 1948, just one year after the passage of the Taft-Hartley Act. There Congress had an opportunity most carefully to review the entire judicial structure of the United States and to define what it meant by the terms which had been used in the legislation and court decisions throughout the years. Clearly, by the adoption of the new Title 28, Congress did not intend, except where it specifically so stated, to create any new or different law from that which had previously obtained, but intended only to revise, recodify and clarify a pre-existing law concerning the judiciary of the United States.

Chapter 5 of Title 28 is captioned: "District Courts". Sections 81 through 131 contained in Chapter 5 create the judicial districts of the United States. In addition to the judicial districts within the continental limits of the United States (i.e., in the forty-eight states), judicial districts are there created for the District of Columbia (28 U.S.C. 88), Hawaii (28 U.S.C. 91), and Puerto Rico (28 U.S.C. 119). *No judicial district is created for Alaska.*

Section 132 of Title 28 provides:

> "There shall be in each judicial district a district court, which shall be a court of record known as the United States District Court for the district."

Since there is no judicial district created for Alaska, the court in Alaska cannot be a district court of the United States within the meaning of Sec. 132 of Title 28.

Section 451 of Title 28 defines the phrase with which we are here concerned, i.e., "district court of the United States", as "the courts constituted by Chapter 5 of this title." This obviously does not include the District Court for the Territory of Alaska. Similarly, 28 U.S.C. 610, in defining the broader term "courts", distinguishes between "District Courts of the United States" on the one hand, and "the District Court for the Territory of Alaska" and certain other territorial courts, on the other.

The revisers of the Judicial Code expressly recognized what they were doing with respect to the District Courts in the District of Columbia, Hawaii and Puerto Rico.

The Reviser's Note to Sec. 88, *supra,* which created the judicial district for the District of Columbia, says:

> "This section *expressly* makes the District of Columbia a judicial district of the United States."

The Reviser's Note to Secs. 1291 and 1292 states:

> "The District Courts for the districts of Hawaii and Puerto Rico are embraced in the term 'Dis-

trict Courts of the United States' (see definitive section 451 of this title)."

This Court has relied upon these very Reviser's Notes to assist it in determining the nature of the District Court in Hawaii (*Stainback v. Mo Hock Ke Lok Po*, 336 U.S. 368, at 376, Footnote 12) and has indicated that the Alaska court stands on a different footing (*ibid.*, at 376, Footnote 11).

Furthermore, the Reviser's Notes state that 28 U.S.C. 91, dealing with Hawaii, is based upon Secs. 641 and 642(a) of Title 48 U.S.C. and that 28 U.S.C. 119, dealing with Puerto Rico, is based upon Secs. 863 and 864 of Title 48 U.S.C. These sections of 48 U.S.C. which had to do with the courts in Hawaii and Puerto Rico were incorporated into the new Title 28 in 1948 and were for that reason repealed by Sec. 39 of the Act of June 25, 1948, Chapter 646, which enacted the new Judicial Code.[58]

However, those provisions of Title 48 which have to do with the District Court for the Territory of Alaska (48 U.S.C.A. 101, *et seq.*), the court in the Canal Zone (48 U.S.C.A. 1344 *et seq.*), and the courts in the Virgin Islands (48 U.S.C.A. 1405, *et seq.*), have not been repealed since they were not placed in the new Judicial Code as were the analogous sections dealing with the District of Columbia, Hawaii and Puerto Rico.

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[58]See pages 1668 and 1683, respectively, of the paper-bound (1948) edition of Title 28.

In adopting the new Judicial Code, Congress did not overlook the Territorial Courts in Alaska, the Canal Zone or the Virgin Islands by inadvertence. The Judicial Code—i.e., Title 28—is, technically speaking, Sec. 1 of the Act of June 25, 1948, Chapter 646. Sections 9 to 13 *of that act* (not of Title 28) are amendments in various particulars of sections of 48 U.S.C. dealing with the District Court for the Territory of Alaska; similarly, Sec. 31 of that act is an amendment to the Canal Zone code (48 U.S.C. 1353) dealing with the court in the Canal Zone; and Secs. 28 and 30 of that act are amendments to sections of 48 U.S.C. dealing with the court in the Virgin Islands.

Thus it is clear that in 1948, only one year after the passage of the Taft-Hartley Act, while Congress in enacting the Judicial Code changed the prior status of the District Courts for the District of Columbia, the Territory of Hawaii, and Puerto Rico, and made them "district courts of the United States", it deliberately did not make such a change in the status of the District Courts for the Territory of Alaska, the Canal Zone, or the Virgin Islands.[57]

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[57] Other evidence that Congress recognized that the Alaska court occupied a different status from that of a "district court of the United States" is to be found in the following Reviser's Notes to Title 28:

(a) Secs. 501, 502, 504 which deal with United States attorneys:

"Words 'including the District of Columbia' were omitted, because the District of Columbia is made a judicial district by section 88 of this title." (501)

"The exception of Alaska * * * was omitted as covered by section 109 of Title 48, U.S.C., 1940 ed., Territories and Insular possessions * * *" (502)

"Reference to the territories * * * was also omitted as covered by the provisions of Title 48, U.S.C., 1940 ed., Territories and

Why Congress chose to leave the Alaska court in the same status as the courts in the Canal Zone and the Virgin Islands is a question that we cannot answer. But the fact is crystal clear from an examination of the legislation that that is exactly what Congress did. The wisdom or lack of wisdom in making these classifications and in grouping the Alaska court with the courts of the other two territories, while giving a full-fledged district court status to the courts in Hawaii, the District of Columbia, and Puerto Rico, is something for Congress to determine.

It is not for this or any other court to modify or change the status or nature of the Alaska court (*Bate*

Insular possessions. See sections 109 and 112 of such title applicable to United States attorney in Alaska, and 1353 applicable in the Canal Zone, and 1405y applicable in the Virgin Islands." (504)

(b) Secs. 541, 542, 545 which deal with United States marshals, and contain substantially the same provisions as those just referred to.

(c) Secs. 631 and 633 which deal with United States Commissioners:

"This revised section by its terms limits the section and Chapter 43 of this title to commissioners appointed by a 'district court' which includes the courts enumerated in chapter 5 of this title but not those of Alaska, Canal Zone or Virgin Islands." (631)

"The words 'in each judicial district' limit the section to the commissioners in the districts enumerated in chapter 5 which includes Hawaii, Puerto Rico and District of Columbia but omits Alaska, Canal Zone, and Virgin Islands." (633)

(d) Sec. 751 which deals with District Court clerks:

"Provision for similar offices in Alaska, Canal Zone, and the Virgin Islands is made by sections 106, 1349 and 1405y, respectively, of Title 48, U.S.C., 1940 ed."

See also 28 U.S.C. 753 where, when Congress wanted to have the courts in the territories as well as the district courts appoint court reporters, it provided as follows:

"(a) Each district court of the United States, the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, and the District

Refrigerating Co. v. Sulzberger, 157 U.S. 1; *Commissioner v. Gottlieb*, 265 U.S. 310; *Kalb v. Feuerstein*, 308 U.S. 433; *United States v. Cooper Corp.*, 312 U.S. 600), which the foregoing shows was not a district court of the United States in 1947 when the Taft-Hartley Act was passed, and which is not such a court today. There can be no question whatsoever that the District Court for the Territory of Alaska never was, and is not now, a "district court of the United States", within the meaning of Sec. 303 of the Act.

None of the grounds relied upon by the courts below to justify their contrary conclusion are tenable.

Court of the Virgin Islands shall appoint one or more court reporters."

Compare the Reviser's Note to the foregoing section with the Reviser's Notes heretofore referred to.

Finally, see the Senate Report on Title 28—i.e., Senate Report 1559, 80th Congress, 2d Session—wherein is discussed an amendment to the House version of Title 28 with respect to jurisdiction over suits against the United States. In the House version the section which is now 28 U.S.C. 1346(b) gave such jurisdiction to "district courts *including the district courts for the Territories and Possessions of the United States.*" The Senate struck out the italicized words and amended the phrase to give jurisdiction to "the district courts, together with the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, and the District Court of the Virgin Islands."

In explaining this amendment the Senate Report stated that it was necessary to conform the section taken from the Tort Claims Act to the revision in which the courts in at least two territories or possessions—Hawaii and Puerto Rico—are included, by virtue of 28 U.S.C. 451, in the term "district court".

> "The district courts for Hawaii and Puerto Rico therefore need not be specifically referred to. On the other hand in at least one of the possessions there are local district courts which are not intended to have tort-claim jurisdiction but which would be included by the general terms of the language which the amendment strikes out. The specific inclusion of the courts of the three remaining territories and possessions thus makes for clarity and precision."

See pages 1680-1681 of the paper-bound (1948) edition of Title 28.

In the first place, while the trial court recognized that the phrase "district court of the United States" without more does not mean the territorial courts, and while it cited *International Longshoremen's etc. v. Wirtz*, 9 Cir., 170 F. (2d) 183 (83 F. Supp. 224, at 225), it suggested that to apply this definition here would lead to difficulties in the enforcement of the statute in other respects (*ibid.*, at 226). It said, for example, that the power of the Board to apply for injunctive relief under Sec. 10(l) of the Labor Relations Act[58] or to seek enforcement of an order while the Circuit Court is in vacation, under Sec. 10(e),[59] might be hindered or embarrassed by applying the definition of the phrase required by the authorities. The difficulty with this argument, assuming it is applicable to the case at bar, is that it calls upon the judiciary to correct *supposed* gaps left, or errors made, by the legislature. This, of course, is not a judicial function. If the application of the proper definition of the phrase used in the Act leads to the difficulty suggested, the remedy, of course, is to apply to the legislature for redress.

In *Bate Refrigerating Co. v. Sulzberger*, this Court said:

> " 'Where the language of the act is explicit,' this court has said, 'there is great danger in departing from the words used to give an effect to the law which may be supposed to have been designed by the legislature * * * It is not for the court to say,

[58]This section is found in Title I of the Act and not in Title III, wherein is contained Sec. 303.

[59]This section is also found in Title I.

where the language of the statute is clear, that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions.' Denn v. Reid, 10 Pet. 524, 527." (157 U.S. 1, at 37.)

In *United States v. Cooper Corp.*, the Court said: "But it is not our function to engraft on a statute additions which we think the legislature logically might or should have made." (312 U.S. 600, at 605.)

In the second place, the trial court was concerned lest the definition urged upon it would preclude the respondent or persons similarly situated from any relief whatsoever. (83 F. Supp. 224, at 226.) It apparently feared that if it applied the correct definition and held that it was not a district court of the United States, the suit would have had to be dismissed and that no relief could have been obtained in Alaska (and presumably in other territories if the suit arose there). Again, if true, that is a matter properly to be addressed to the Congress and not to be remedied by judicial tampering with the legislation. However, Sec. 303(b) gives jurisdiction not only to district courts of the United States but also to any other court having jurisdiction of the parties, and clearly the Alaska court,[60] assuming it had jurisdiction of the parties, could have proceeded with the suit on the basis of the latter proviso.[61]

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[60] Cf. *Coquitlam v. United States*, 163 U.S. 346.

[61] In such a case, however, there would be a substantial difference in both the substantive law applicable and the procedure to be followed, as we shall point out below.

It is not unusual for Congress to create a cause of action and place its enforcement in different forums where different rules of procedure as well as substantive law may apply. Examples come readily to mind. A seaman may elect to sue under the Jones Act[62] in the state or federal court,[63] and if in the latter, either at law or in admiralty,[64] and depending upon his election, different rules of procedure will govern his cause.[65] Damage actions for violations of price and rent control statutes[66] also may be brought in either forum and different rules are applicable.

So, here, the action may have been maintained in the trial court not as in a district court of the United States—for it was not that—but as in any other court having jurisdiction over the parties—assuming it did have such jurisdiction. Thus the fear that appellee would have had no forum within which to maintain its suit is not well-founded, since the trial court is the court of general jurisdiction for the Territory of Alaska. (48 U.S.C. 101.)

The Court of Appeals felt that in order to answer the contention made by petitioner that the trial court was not a district court of the United States, it was necessary to inquire "into the extent and nature of the jurisdiction conferred upon that court by Congress when it established the court as a district court

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[62] 46 U.S.C.A. 688.

[63] *O'Donnell v. Great Lakes, etc.*, 318 U.S. 36; *Garrett v. Moore-McCormack Co.*, 317 U.S. 239; *Engel v. Davenport*, 271 U.S. 33.

[64] *Rogosich v. Union Drydock & Repair Co.*, 3 Cir., 67 F.2d 357.

[65] *Pacific SS Co. v. Peterson*, 278 U.S. 130.

[66] 50 U.S.C.A. App. 925(c), *et seq.*

for the District of Alaska". (R. 1116-1117; 189 F. 2d 177, 182.) Having satisfied itself that the District Court for the Territory of Alaska had had conferred upon it the same jurisdiction as that conferred upon districts courts of the United States, the Court of Appeals concluded that the District Court for the Territory of Alaska was in fact a district court of the United States.

The difficulty with this position is that it has repeatedly been held that the mere grant of a district court's jurisdiction to a territorial court does not make the latter a district court of the United States.

In *United States v. Burroughs*, 289 U.S. 159, this Court had occasion to consider the application of the Criminal Appeals Act of 1907, which used the phrase "district court", to the Supreme Court of the District of Columbia. It was argued there that the District of Columbia court was a "district court" because it had been vested with the same jurisdiction as district courts of the United States. The argument was rejected.

> "But vesting a court with 'the same jurisdiction as is vested in district courts' does not make it a district court of the United States. This has been repeatedly said with reference to territorial courts. Reynolds v. U. S., 98 U.S. 145; Stephens v. Cherokee Nation, 174 U.S. 476; Summers v. U. S., 231 U.S. 92". (289 U.S. 159, at 163.)

This Court pointed out very clearly that the Criminal Appeals Act "employs the phrase 'district courts,' not 'courts of the United States,' or 'courts

exercising the same jurisdiction as district courts.'" (289 U.S. 159, at 163.)

So here, Sec. 303(b) employs the phrase "district courts of the United States," not "courts of the United States" or "courts exercising the same jurisdiction as district courts" or any other such phrases.

The mere fact, therefore, that a territorial court is vested with the same jurisdiction as a district court of the United States, does not make the territorial court a district court of the United States.

What the court below has done is to rewrite the statute in the manner which it believes would be more orderly and logical. However, the language of the statute is clear, and, as we have pointed out above, there is not room or occasion for judicial legislation.

Finally, the court below is guilty of a real inconsistency on this point. In its consideration of the question now under discussion, it takes the liberty to depart from the literal language of the statute and to read the statute in a manner which it thinks is designed to provide a logical and reasonable application. Unquestionably it is indulging in its own predilections on this score. Yet when it considers the issue raised by Point I in the Argument above, it rejects the argument advanced by petitioners that the purpose of Congress and logic and reason require that there be a determination by the Board under Sec. 10(k) before a cause of action under Sec. 303(a)(4) can arise, and it states that it must reject that argument because "no such limitation appears expressly in Section 303(a)

(4)". (R. 1129; 189 Fed. 2d 177, 187.) Thus it is seen that on the one hand the Court below misapplies a rule of statutory construction to read the words "district court of the United States" so as to include a court which clearly was never a district court of the United States; on the other hand, it applies a rule of narrow statutory construction to reach a result clearly at variance with the express intention of Congress.

B. AS A RESULT OF MISCONCEIVING THE STATUS OF THE TRIAL COURT, THE COURT BELOW PERMITTED TO STAND ERROR PREJUDICIAL TO PETITIONERS CONCERNING MATTERS OF JURISDICTION, SERVICE AND AGENCY.

The foregoing has demonstrated, we think, beyond any question that the trial court is not a district court of the United States. The error of the courts below in this regard was not a mere abstract or academic one but resulted in serious prejudice to petitioners. Since the trial court was not a district court of the United States, the limitations and provisions of Sec. 301 of the Act were not applicable to this cause. This conclusion is impelled by a reading of Sec. 303(b), which provides that suits under Sec. 303(a) may be maintained either in the district courts of the United States or in any other court having jurisdiction of the parties. It is only in connection with the first group of courts—i.e., district courts of the United States—that the statute makes the limitations and provisions of Sec. 301 applicable.[67]

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[67] Sec. 303(b) reads:

"* * * *in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount at controversy*, or in any other court having jurisdiction of the parties * * *" (Italics supplied.)

The limitations and provisions we discuss directly below. In effect, they gave the "district courts of the United States", referred to in Sec. 303(b) broader jurisdiction over non-resident labor unions, made service of the process of such courts upon non-resident unions easier, and authorized broader concepts of agency in such courts, than would otherwise obtain.

But since the trial court was not such a court, it had jurisdiction over the International only by virtue of either the common law or the statutory law of Alaska. Similarly, if service was properly effected upon the International, it was so effected only by virtue of the common law or the statutory law of Alaska. And finally, the agency relationships between the alleged officers of the two labor organizations and their alleged principals, had to be determined by the common law or the statutory law of Alaska.

In each instance, however, the trial court applied the provisions of Sec. 301 and in each instance those provisions were detrimental to the petitioners. On each issue the common law or the Alaska law was more favorable to petitioners.[68]

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[68]That the extension of jurisdiction over non-resident associations, the greater ease of service thereon, and the broader scope of agency doctrine was limited by Congress in actions under Sec. 303(b) to cases in United States district courts and not extended to "other courts", gives respondent no cause for complaint. It may well be that Congress, recognizing that such extensions were novel and opened the door to grave abuses to the detriment of trade unions, decided that it did not want to permit the extended doctrines to be applied and administered by any but judges of the United States district courts—judges in whose competence and ability Congress presumably had greater faith than it might have had in judges of "any other court", since it had more knowledge of those men than of other judges.

The limitations and provisions of Sec. 301 which the court applied are substantially as follows: Sec. 301(b) provides that a labor organization shall be bound by the acts of its agents, *and that it may be sued as an entity.* Sec. 301(c) provides that the district courts of the United States shall have jurisdiction over labor organizations in the district in which *they maintain their principal office,* or in the district in which *their duly authorized agents* are engaged in representing employee members. Sec. 301(d) provides that the service of process upon an officer or *agent* shall constitute service upon the labor organization. Sec. 301(e) provides that in determining whether any person is acting as an agent, *the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.*

Even superficial examination of these provisions of Sec. 301 indicates how broadly they have extended the rules with respect to jurisdiction, service and agency. A comparison of those provisions with the common law or Alaska statutes on the subject demonstrates that in this particular case the error committed by the trial court was very significant.

1. As to jurisdiction.

The trial court assumed jurisdiction over the International despite the fact that it maintained no office in Alaska and that its principal place of business was in California (Pl. Exh. 19, par. 5, R. 12; R. 273), upon the ground that it had an "International Representative" employed by it in Alaska

who was there representing its employee members. This assumption of jurisdiction was clearly based upon Sec. 301(c) and upon nothing else. Since, as we have shown, Sec. 301(c) does not apply, the trial court could acquire jurisdiction over the International only if the common or statutory law of Alaska provided therefor.

Addressing ourselves first to the narrow question of whether a labor organization can be sued as an entity in Alaska, we point out first that at common law there was no jurisdiction in any court to entertain such a suit. *United Mine Workers of America v. Coronado Coal Co.*, 259 U.S. 344. In a most recent collection of authorities on the subject, it is stated:

> "It is a well established rule that at common law, in the absence of an enabling or permissive statute, an unincorporated voluntary association is not capable of being sued in its common or association name, for the reason that such an association, in the absence of statutes recognizing it, has not legal entity different from that of its members." 149 A.L.R. 508, at 510.

While the decision of this Court in the *Coronado Coal* case modified the common law rule insofar as district courts of the United States are concerned, it did not do so for the courts of the Territories.

However, irrespective of the question of whether the Alaska court has jurisdiction over any unincorporated labor organization as an entity, the question here, at least so far as petitioner International is concerned, is whether it has jurisdiction over such

a labor organization *which is a non-resident of the Territory of Alaska and which maintains no place of business there.*

The attempt of the trial court to assert jurisdiction over the International which was (as to it) a non-resident, unincorporated association, raises serious constitutional questions in addition to those already discussed. In *Flexner v. Farson,* 248 U.S. 289, this Court held that a Kentucky statute providing that jurisdiction could be obtained over a foreign partnership or association upon a cause of action arising from business done in the state, by serving the agent of such partnership or association residing in the state, was unconstitutional. The statute was held to have violated the due process clause of the Fourteenth Amendment.

This case has been followed by the highest courts of a number of states, all of which invalidated similar statutes in their own states.[69] The doctrine of the *Flexner* case has been qualified in later cases but the basis of the qualification lies in the nature of the business of the foreign partnership or association over whom jurisdiction is sought to be asserted. *Doherty & Co. v. Goodman,* 294 U.S. 623, upheld the constitutionality of an Iowa statute which provided that a non-resident association *conducting an office* in Iowa could be served by serving an agent employed in such office, *in all matters growing out of or connected with*

[69] *Woodfin v. Curry,* 228 Ala. 436; *Andrew Bros. v. McClanahan,* 220 Ky. 504; *Victor Corville etc. v. R. G. Dunn & Co.,* 153 La. 1078; *Knox Bros. v. Wagner & Co.,* 141 Tenn. 348.

the business of that office, provided that the business conducted was of a special nature *subject to special regulation by the state.*[70]

The principle which these cases establish is that at common law no foreign association could be subjected to the jurisdiction of a forum simply by service upon an agent doing business within the state. If a specific statute provides for such an assertion of jurisdiction, then such a statute will be upheld if the foreign association maintains an office in the state, if the cause of action arises out of the business of that office, and if the business in question is subject to special regulation by the state.

A thorough perusal of the three volumes of the Alaska Compiled Laws, Annotated (1948), reveals no statute of the territory which authorizes service upon a non-resident association, and none was cited in the opinion of the court below.

Accordingly, as to the International, the judgment here must be reversed either because it can be stated at once that Alaska could not have acquired jurisdiction over the person of the International under the cases cited above; or as to both petitioners, because the Alaska court failed to rule on whether or not under its law, jurisdiction could have been obtained

[70]These qualifications are not present in this case. The International did not conduct an office in Alaska. The action did not grow out of, nor was it connected with, the business of any such office. We shall point out immediately below that there in fact is no Alaska statute akin to the Iowa statute involved in the *Doherty* case.

over them. Its reliance upon Sec. 301(c) in the place of its own law was clearly defective.

2. As to service.

Connected closely with the question just discussed is the question of service. Here, again, the trial court held that service was properly effected upon the International by service upon its alleged "International Representative". The validity of this service was dependent solely upon the provisions of Sec. 301(d) and (e), and this reliance, as we have already pointed out, was not well founded.

Even under those sections process upon a non-resident International Union was vacated under circumstances described by the court as follows:

> "The defendant does not have an office or a representative in New York. *The defendant's local in New York is an autonomous body and defendant may not intervene or interfere in its affairs except when the local reaches an impasse on its relations with an employer,* and then only at the request of the local. When such a request is made, the defendant sends its representative to the district *merely to assist the local and the employer in arriving at an agreement.*" (Italics added.) *Daily Review Corp. v. International Typographical Union,* 9 F.R.D. 295 (E.D. N.Y.).

In granting a motion to vacate service, the court said:

> "It appears that the defendant's constitution and by-laws require that its principal office be located in Indianapolis, Indiana; that all of its books,

records, etc. be kept there; that its funds be deposited in Indianapolis banks and that its officers reside there.

"By reason of the foregoing I find that the defendant is not doing business in New York. Philadelphia and Reading Ry. Co. v. McKibin, 243 U.S. 264, 265; Danega Inc. v. Lincoln Furn. Mfg. Co. Inc., 29 F. 2d 164; Amtorg Trading Corp. v. Standard Oil of California, 47 F. Supp. 466."

Daily Review Corporation v. International Typographical Union, 9 F.R.D. 295 (E.D. N.Y.).

In the case at bar the constitution of the International (Pl. Exh. 3, R. 136-276) and the affidavits of Verne Albright (R. 8-14) and Germain Bulcke (R. 16-18) demonstrate that the International maintains its principal office and place of business in San Francisco, that all of its books, records, accounts, and monies are kept there, and that none of its officers reside in Alaska. Thus the reasoning of the decision in the *International Typographical* case, *supra,* in which case the provisions of Sec. 301 were concededly applicable, compels a similar conclusion here where the broad provisions of Sec. 301 are not applicable. The International's motion to quash service should have been granted.

3. As to agency.

The error which the trial court fell into concerning the laws of agency stem, as do the other two errors discussed, from its misconception of its own status

and consequently its unjustified application to this cause of the provisions of Sec. 301. The error is most pronounced in the instruction to the jury on the question of agency. (R. 49.) This instruction is framed entirely upon the theory of Sec. 301(e) and specifically informs the jury that the question of whether the specific acts performed were actually authorized or subsequently ratified is not controlling. Since the evidence fell short of showing as a matter of law that the International either authorized or subsequently ratified the acts complained of, this instruction was highly prejudicial to the International.[71]

The ordinary rules of agency, of course, require either prior authorization or subsequent ratification. (*Restatement of Agency*, Secs. 1, 15, 26, 82, 140, 212, 215.) In the absence of either, the principal cannot be bound by the acts of his agent.

Since the trial court was not a "district court of the United States," it erred in applying to this case the provisions of Sec. 301 of the Act. That error led it into an assumption of jurisdiction over the International which it did not have, into an acceptance of a purported service upon the International which was not a valid service, and finally, into an application of the cause (in its instruction to the jury) of rules of agency which were not applicable and which were

[71] Even if there was some evidence of participation by agents of the International, the question of whether this constituted "authorization" or "ratification" should have gone to the jury as a question of fact (Cf. *United Brotherhood etc. v. United States*, 330 U.S. 395, at 409-410), under appropriate common law agency instructions. 2 *Am. Juris.* 349 *et seq.*, and cases there cited.

prejudicial to both the International and Local 16. For each of these reasons, the judgment below must be reversed.

III.

THE FAILURE OF THE RESPONDENT TO OBSERVE ITS DUTY UNDER THE ACT TO ATTEMPT TO SETTLE THE DISPUTE SHOULD HAVE BEEN CONSIDERED AS A DEFENSE TO ITS ACTION, OR IN MITIGATION OF DAMAGES.

Within the framework of its erroneous conception of the elements essential to constitute a cause of action under Sec. 303(a)(4), and of its status as a court, the trial court committed an additional error which requires the reversal of its judgment. The trial court refused to give petitioners' requested instructions numbers 1, 2, 12 and 13 to the jury.[72] These instructions stated the general purposes and policies of the Act, as well as the duties of employers and unions involved in labor disputes to make reasonable efforts to settle them, and to employ the mediation and conciliation services of the Federal Government in such disputes. By the instructions, petitioners proposed to tender to the jury as an issue for its consideration the effect of the conduct of respondent on its right to recover damages. By refusing to give these instructions, the trial court ruled that the conduct of the respondent in the dispute could neither constitute a defense to the action against petitioners nor be considered in mitigation of damages.

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[72] Appendix, pp. i to iv.

It is submitted that this ruling of the trial court was erroneous, and prejudiced petitioners. If the respondent's own wrong-doing caused the petitioners' activities, the respondent had no right to recover. "No one may take advantage of his own wrong." (*In re F. P. Newport Corp.*, 9 Cir., 98 F. (2d) 453.)

The record shows that the respondent's own wrong-doing caused the acts of which it complained. Early in August, 1947, Eugene S. Hawkins, General Manager of respondent, had promised Albright, who represented the longshoremen, that if Local 16 and Local M-271 reached an agreement concerning the work to be done for respondent by the longshoremen, the respondent would be perfectly agreeable to such an arrangement. (R. 181-182.) The respondent repudiated this commitment when it rejected, early in April, 1948, the adjustment which had been reached between the two locals. The cross-examination of Hawkins on the matter reads as follows:

> "Q. Later on you had a number of meetings with representatives of Local 271 and Local 16 in which Local 271 asked you to turn that work over, namely the loading of the lumber, to Local 16; isn't that true?
>
> A. Yes.
>
> Q. And you still said that you couldn't do so because you had assigned that work to Local 271 which was now asking you to turn the work over to Local 16. Is that the position you took then?
>
> A. Yes.
>
> Q. At this time if your sole reason for not assigning this work to Local 16 was because you

had turned it over to 271 and 271 asked you to turn it over to 16, your contention was no longer tenable; isn't that true?

A. Yes—that wasn't the sole and only reason that developed.

Q. You found another reason?

A. Another reason had been developed by that time.

Q. You never mentioned that reason either to representatives of 271 or of 16, did you?

A. I don't recall any specific instance; no." (R. 238-239.)

The additional reason referred to by Hawkins was totally unrelated to the cost of respondent's operations. (R. 257.) It was described by Eugene H. Card, the respondent's Labor Relations Advisor (R. 297) as follows:

"Q. What is the Company's objection to hiring longshoremen to load barges?

* * * * * * *

A. Because we have an agreement with another union under which that work is covered. We can't break our agreement with the I.W.A. and take the work away from them and give it to somebody else just because they come along and ask for it." (R. 306.)

"Q. Did you have any objection to making two contracts, with two organizations?

A. Yes, of course.

Q. What were the reasons for it?

A. You can't take work away from one group of men and give it to somebody else.

* * * * * * *

Q. If you took the work away—did it make any difference to you who did the work? Who did you want to do the work?

Mr. Andersen. That is a complex question.

Q. Did it make any difference to the company?

A. It made a difference in this respect; yes. We couldn't permit the I.W.A. to violate their agreement any more than they would permit us to violate ours.

Q. Of course people can call off an agreement if they want to?

A. Yes.

Mr. Andersen. I object.

Q. Why were you unwilling to void the agreement with the I.W.A. and draw up another excluding barge work?

A. If we had let the agreement go then and sign with the longshoremen, the next day some other union would be down and say, 'We want an agreement covering machinists,' or, 'We want an agreement covering painters,' or, 'We want an agreement covering carpenters.' We weren't just going to open road to everyone in the Territory coming in and covering small groups of people.

Q. Was there any other reason you can think of now?

A. None that I know of; no." (R. 309-310.)

The refusal of respondent to live up to its word was totally uncompromising. Leonard Evans, the Alaska representative of the United States Department of Labor (R. 985), who had been assigned to attempt to conciliate the dispute (R. 986), was informed by

Hawkins that the respondent would close the plant down rather than deal with the longshoremen. (R. 988-989.) This unyielding attitude of the respondent put an end to negotiations which quickly could have settled the entire dispute. The testimony of Evans reveals the following:

> "A. * * * I tried to get a meeting of the representatives of the sawmill, representatives of the Company and representatives of the Longshoremen.
>
> Q. Were you successful in getting Mr. Hawkins to agree to such a conference?
>
> A. Either then or later I was successful in getting the three parties to meet for a very short time in the Commissioner of Labor's office.
>
> Q. When was that?
>
> A. If I remember right, it was a Friday afternoon.
>
> Q. About when?
>
> A. In the same week.
>
> Q. Were your conciliations successful then or unsuccessful?
>
> A. When we left I was hopeful. We had scheduled a second meeting for the following Monday. All three parties at that time indicated they would all show up. On Monday the Company representatives didn't show up. When I phoned to remind them they said 'No soap—no meeting.'
>
> Q. That is, they refused to meet, did they?
>
> A. Yes." (R. 990-991.)

In addition, the record was uncontradicted that the respondent knew that if it had kept the commitment it

had made to observe the understanding reached between Local 16 and Local M-271, the mill would have continued to operate. Hawkins testified as follows on cross-examination:

"Q. And from that point on all they requested was that you turn the work over to them from the bull rail out; that is correct, isn't it?

A. From the bull rail out; yes.

Q. But of course you insisted that the I.W.A. continue to do the work; isn't that correct?

A. Yes.

Q. And despite the fact that four men would only be used part time, you shut down the mill rather than hire these two or four longshoremen; is that true?

A. No.

Q. You didn't give the work to the longshoremen?

A. We didn't shut down the mill——

Q. You didn't give the work to the longshoremen?

A. No.

Q. You knew, if you gave the work to the longshoremen, all the men would return to work and the mill would function at full blast, didn't you?

A. Yes, I presume." (R. 270-271.)

In the light of the public policy of the Act with respect to the settlement of labor disputes, the Jury should have been permitted to consider this breach by the respondent of its previous commitment and its uncompromising refusal to negotiate a settlement. It might well have concluded that the respondent's own

wrongdoing, under the terms of the very statute upon which it relied for relief, should defeat its right to recover, or at the very least, diminish the damages to which it otherwise might be entitled.

Since respondent's cause of action was for an alleged statutory tort, the rule of diminution of damages was applicable. That rule is given by the *Restatement of Torts* as follows:

> "Sec. 918. Avoidable Consequences.
>
> "(1) Except as stated in Subsection (2), a person injured by the tort of another is not entitled to recover damages for such harm as he could have avoided by the use of due care after the commission of the tort.
>
> "(2) A person is not prevented from recovering damages for a particular harm resulting from a tort if the tortfeasor intended such harm or adverted to it and was recklessly disregardful of it, unless the injured person with knowledge of the danger of such harm intentionally or heedlessly failed to protect his own interests."

By substituting the statutory duty of the respondent (to bargain in good faith and to utilize fully the Conciliation Service of the Federal Government), for the "due care" referred to in the Restatement section, the requested instructions would have submitted the Restatement rule to the jury. Further, irrespective of the statutory policy, the respondent's duty to mitigate damages might well have included an obligation to comply with the request of Local 16 and Local

M-271 concerning its barge loading, and thus prevent the closing of its mill, pending a final settlement of the dispute. An analogous situation occurred in *Alcoa Steamship Co. v. Conerford,* 25 LRRM 2199 (D.C. S.D. N.Y. 1949). There, stevedoring and steamship companies sued local unions of longshoremen[73] for breach of contract, under the provisions of Sec. 301 of the Act.[74] The breach consisted of the refusal of the longshoremen's unions to furnish gangs of men to load or unload vessels unless the number of men to be employed in the hold of each vessel was restricted to eight. The court's opinion was concerned solely with the question of the amount of damages to which the various plaintiffs were entitled, it being conceded that the collective bargaining contract had been breached. In considering the specified damages claimed by one plaintiff to have arisen from a six-day work stoppage by the longshoremen, the court stated:

> "It can be seen that Cunard did not follow the practice of the Cuba Mail Co. and permit the loading of the ships with eight men in the hold once it became clear that no longshoremen would work if more than eight were demanded. Instead, it allowed six days to elapse in which no work

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[73]The defendants there were affiliated with the International Longshoremen's Ass'n (AFL), with which petitioners have no connection.

[74]The pertinent portion of Sec. 301 reads as follows: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." (29 U.S.C. Supp. (1949), Sec. 185.)

was done. This upset the carrier's schedules and caused the damages to mount. Nederlandsch Amer. S.M. v. Stevedores' and L.B. Soc., 265 Fed. 397, E.D. La. 1920, is authority for the proposition that in such a situation the steamship company is under a duty to mitigate damages. I find that it was not unreasonable for Cunard Limited to wait until August 22, 1947, before undertaking the loading of the SS. Port Melbourne and the SS. Sibley Park in an effort to induce Local 791 to comply with the contract. But in view of the known imminent arrival of the SS. Media it was unreasonable to delay past that date, because to do so would have jeopardized Cunard's chances of adhering to its shipping schedule. On the evidence, it appears that Local 791 would have been willing to load the SS. Port Melbourne and the SS. Sibley Park with eight men in the hold starting August 22, 1947, and that the work could have been completed and the ships removed by the time the SS. Media arrived on August 27, 1947. For this reason the claims for rerouting the SS. Media cannot be allowed, nor can the claims incident to meat which had spoiled before loading on the SS. Port Melbourne." (25 LRRM at 2201.)

The case of *Nederlandsch Amer. S.M. v. Stevedores' and L.B. Soc.*, 265 F. 397 (D.C. E.D. La.), which was relied on above, also involved an attempt to recover for breach of a collective bargaining agreement. The members of the defendant longshoremen's union[75] there involved had declined to work for plaintiff at

[75] A union with which petitioners also have no connection.

the wages specified in a collective bargaining contract, and had struck for higher wages. The plaintiff sought damages based on demurrage which accrued while its ship lay unloaded because of the strike. The court stated:

> "This brings up the question of damages. Undoubtedly the ship was delayed and demurrage accrued; but this might have been avoided by paying the extra wages demanded. The recovery should be confined to what it would have cost for additional wages to unload the ship at the rate demanded." (265 F. 397, at 400.)

In the Court of Appeals respondent claimed that had it acceded to the request of Local M-271 to assign the barge-loading work to longshoremen represented by Local 16, it would not only have been violating its agreement with Local M-271, but would have been violating the law as well. Respondent thus makes the startling assertion that it would have been violating the Act had it settled the entire dispute here in a manner specifically provided for in the Act. The very terms of Section 10(k) contemplate the voluntary adjustment of jurisdictional disputes by the parties themselves.

Furthermore, respondent admitted that when Local M-271 asked it to assign the work to the longshoremen, in accordance with the agreement between the two Locals, Local M-271 was asking that its agreement with respondent be modified to that extent. (R. 309.) We know of no principle of contract law, nor did

respondent point one out, which would subject one contracting party to an action for breach of contract for assenting to the modification of a contract at the request of the other party.

Finally, by assigning the barge-loading work to the longshoremen at the request of Local M-271, the respondent would no more have violated Section 8(a)(3) of the Labor Relations Act than it did when it deprived the longshoremen in October, 1947, of work they had been doing for respondent to that time. (R. 216-218, 232.) In neither instance could it be demonstrated that the assignment was motivated by the union affiliation or lack of affiliation of the workers involved, which is essential to a violation of Section 8(a)(3).

The Court of Appeals upheld the refusal of the trial court to give the instructions in question on the ground that the respondent had no duty to bargain with petitioners in an effort to reach a settlement of the dispute. (R. 1140.) Assuming, without conceding, that no such duty existed, such a position ignores completely the fact that Local M-271, the conceded exclusive bargaining representative for respondent's mill employees, joined with Local 16 in the request that the barge-loading work be assigned to the longshoremen. The respondent unquestionably was under a duty to bargain with Local M-271 on the matter. Instead, as has been demonstrated from the record, it flatly refused to comply with or bargain concerning Local M-271's reasonable request. The jurisdictional

dispute of which respondent complains is thus clearly one of its own making.[78] It was only through respondent's efforts that Local M-271 was later persuaded to disagree with Local 16 on the assignment of the work. (R. 453, 534-536.)

In the light of the foregoing authorities, as well as the uncontradicted evidence in the record that respondent itself created the jurisdictional dispute here involved, it is clear that the jury was entitled to consider the issues included in petitioner's requested instructions numbers 1, 2, 12 and 13. Had it done so, its verdict might have been for petitioners, or for a lesser amount. The error of the trial court in refusing to tender these issues to the jury prejudiced petitioners, and requires a reversal of its judgment.

CONCLUSION.

For the reasons stated, it is plain that the trial court committed fundamental errors in its conception of the nature of conduct which is actionable under Sec. 303(a)(4) of the Act, in its ruling that it was a district court of the United States within the meaning of Sec. 303(b) of the Act, and in its conduct of the trial. Accordingly, it is respectfully submitted

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[78] That the Regional Director for the Nineteenth Region of the Board, and the Acting General Counsel of the Board, took this view of the situation, is demonstrated by their dismissal of the first Sec. 8(b)(4)(D) charge filed by respondent, at a time when both Local M-271 and Local 16 were jointly requesting that the barge-loading work be assigned to the longshoremen.

that the judgment of the Court of Appeals, upholding that of the trial court, should be reversed and remanded, with directions that the judgment of the trial court be vacated.

Dated, San Francisco, California,
November 14, 1951.

RICHARD GLADSTEIN,
Counsel for Petitioners.

GLADSTEIN, ANDERSEN & LEONARD,
NORMAN LEONARD,
ALLAN BROTSKY,
Of Counsel.

(Appendix Follows.)

Appendix.

Appendix

Instructions Nos. 1, 2, 12 and 13, offered by petitioners and refused, read as follows:

"1. You are instructed that it is the public policy of the United States that—

"Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

"It is the purpose and policy of the Labor Management Relations Act of 1947, oftentimes called the 'Taft-Hartley Act', in order to promote the full flow of commerce, to prescribe legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and prescribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce." (R. 34-35.)

"2. The Taft-Hartley Act was enacted in the interests of public policy to avoid economic strife and warfare, and so if you find from a consideration of all the evidence in this case that the action of the Juneau Spruce Corporation in refusing to accede to the demand of IWA M-271 to turn over the loading of barges to Local 16 was unreasonable or unjustifiable, in view of that provision, plaintiff is not entitled to recover any damage it may have sustained on account of such unreasonable or unjustifiable refusal to bargain.

"This policy is applicable only to the territorial limits of the United States and not to Canada." (R. 35-36.)

"12. You are instructed that section 201 of the Taft-Hartley Act provides as follows:

"That it is the policy of the United States that:

"'(a) Sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interests of the employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees;

"'(b) The settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage em-

ployers and representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for settlement of disputes; and

"'(c) Certain controversies which arise between parties to collective bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreement provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies.'" (R. 43-44.)

"13. Section 204 of the Taft-Hartley Act provides as follows:

"'In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes employers and employees and their representatives, in any industry affecting commerce, shall:

"'(1) Exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provisions for ad-

equate notice of any proposed change in the terms of such agreement;

"'(2) Whenever a dispute arises over the terms or application of a collective bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously;

"'(3) In case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this act for the purpose of aiding in a settlement of the dispute.'" (R. 44.)

Section 10(l) of the National Labor Relations Act, as amended, provides as follows:

"Sec. 10 * * *

"(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred,

is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further,* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to sections 8 (b) (4) (D)."

Sections 303(a)(2) and (3) of the Act provide as follows:

"Sec. 303.

"(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

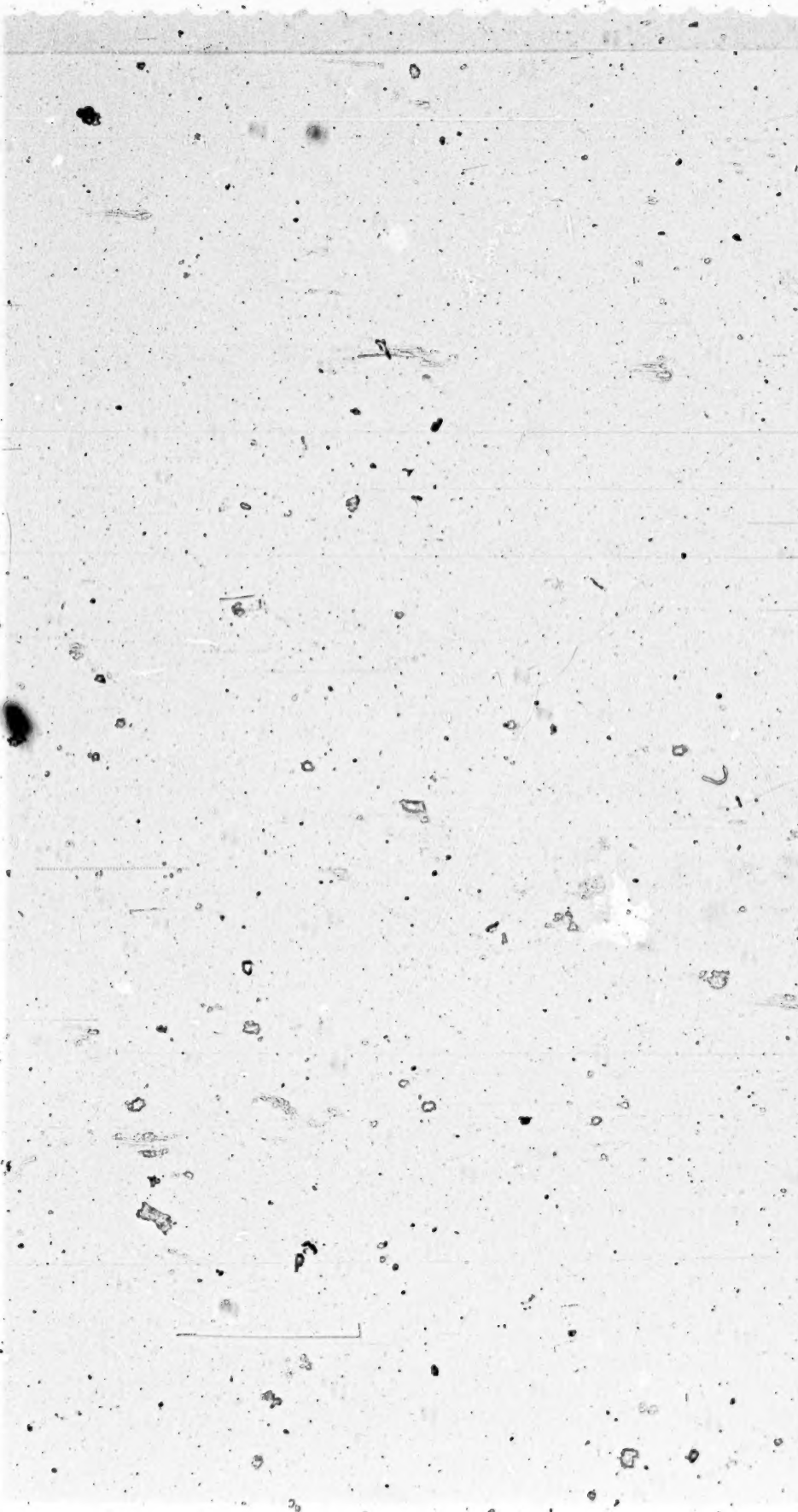
* * * * * * *

"(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

"(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

* * * * * * *"





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In the Supreme Court

of the United States

No. 280

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION AND INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, LOCAL 16,

Petitioners,

v.

JUNEAU-SPRUCE CORPORATION,

Respondent.

RESPONDENT'S BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

CHARLES A. HART,
1410 Yeon Building,
Portland 4, Oregon,
Counsel for Respondent.

MANLEY B. STRAYER,
JAMES P. ROGERS,
HART, SPENCER, MCCULLOCH, ROCKWOOD AND DAVIES,
1410 Yeon Building,
Portland 4, Oregon,
Of Counsel.

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 9-51

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OPINIONS BELOW

The opinion of the trial court rendered on demurrers and motions is reported in 83 F. Supp. 224. The opinion of the Court of Appeals is reported in 189 F. 2d 177 (R. 1106).

STATUTE INVOLVED

The only statute involved in this case is Section 303 of the Labor Management Relations Act, 1947, 29 U.S.C. 187, the pertinent portions of which read as follows:

> "Section 303 (a). It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—
>
> * * * * *
>
> "(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. * * *
>
> "(b) Whoever shall be injured in his business or property by reason or any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

QUESTION PRESENTED

The only question presented by the Petition is whether a determination by the National Labor Relations Board under Section 10(k) of the Act is a jurisdictional prerequisite to an action for damages under Section 303(b). The Court of Appeals did not, as intimated in the Petition, rule on whether the same conduct will violate Section 8(b)(4)(D). Neither did it pass on whether a labor organization can be sued for damages for activities directed at compelling an employer to abide by the Board's award.

STATEMENT OF THE CASE

Petitioners' statement of the case contains numerous inaccurate and misleading statements and seems designed to create the impression that the Petitioners were the bargaining representatives for a portion of respondent's employees and that respondent wrongfully took work away from such employees and gave it to members of a rival union. The Court is referred to the opinion of the Court of Appeals for an accurate statement of the facts from which this action arose (R. 1106).

From such opinion it will be noted that respondent at all times material to this action had a contract with Local M-271, International Woodworkers of America, CIO, recognizing that union as the exclusive bargaining agent for all of respondent's employees, except clerical

and supervisory employees, which contract included the disputed work of loading barges; that while members of petitioners were occasionally hired to load vessels or barges of *a customer*, they were never hired to load respondent's barges (R. 1113, 1143). Petitioners, therefore, in demanding the work of loading respondent's barges, were not demanding the restoration of jobs previously performed by them, but were mere interlopers, representing none of respondent's employees, demanding that it agree to take the newly created work of barge-loading from its regular employees and give it to their members. When respondent refused to accede to these demands, petitioners engaged in the unlawful activities outlined in the opinion of the Court of Appeals. Thus, this case involves no question of the right of an employer to favor one group of employees over another. It involves only the right of an employer to assign work to his employees free from interference of outsiders representing none of his employees.

ARGUMENT

1. Throughout the Petition various inaccurate statements are made as to the nature of the Court of Appeals' decision. Consideration of the merits of the Petition will be facilitated by first pointing out what the Court of Appeals *did not* hold.

The Court did not hold, as stated in Specification of Error 2, that conduct which is lawful under Section 8(b)(4)(D) is unlawful under Section 303(a)(4). It

held only that the conduct in question was unlawful under Section 303(a)(4). The Court was not called upon to decide, and it is only Petitioners' conclusion (not supported by statute or decision) that the same conduct was lawful under Section 8(b)(4)(D).

The Court did not hold, as stated on page 17 of Petitioners' brief, that the question of "which employees are entitled to disputed work" was immaterial in an action for damages under Section 303(a)(4). It was not required to pass on such question because, as stated, this was not a contest between two groups of *employees* of respondent.

Neither did the Court hold, as stated on pages 17 and 18 of Petitioners' brief, that a union could be held liable for damages, resulting from a strike to compel assignment of work to its members, even though the Board had previously determined in a Section 10(k) proceeding that employees represented by the striking union were "entitled to the work". The Court had no occasion to so decide because long prior to the Court's decision the Board had held that the members of Petitioners were *not* entitled to the work in question.[1]

What the Court of Appeals did hold was that a Section 10(k) determination by the National Labor Rela-

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[1] *Juneau Spruce Corporation*, 82 NLRB 650. Any intimation that Petitioners were only awaiting the outcome of the 10(k) proceedings and intended to abide by the Board's determination is disproved by the fact that Petitioners' unlawful activities continued for 39 days after the issuance of the Board's determination and the picketing was not discontinued until May 9 shortly before the Regional Director's anticipated application for an injunction, which was issued on May 14, 1949. *Juneau Spruce Corporation*, 90 NLRB No. 233, Note 5. Thus the picketing was in progress during most of the trial, which commenced on April 27, 1949, and terminated on May 13, 1949 (R. 109, 1065).

tions Board was not a jurisdictional prerequisite to an action for damages under Section 303(b) against labor organizations representing none of respondent's employees. In so holding the Court followed the plain language of the statute, which requires no such determination. The Court failed to find anything in the legislative history of the Act to support the Petitioners' contention and, to the contrary, found evidence of a congressional intent to provide means of direct action by employers without awaiting administrative proceedings. Answering Petitioners' argument that this would lead to incongruous results if damages should be recovered and the Board should later hold that members of the striking union were entitled to the work, the Court pointed out that such contingency could not arise because the ones "entitled to the work" were determined by the employer's assignment, not by the Board or the courts. In so holding it referred to a number of decisions of the Board, which has uniformly refused to interfere with the employer's right to assign work.[2]

The Petition herein contesting the correctness of the Court's decision presents no substantial question of federal law. The contentions advanced by Petitioners find no support in the statute, in its legislative history, or in any decisions of any court or the National Labor Relations Board. All of such contentions were fully and carefully considered by the Court of Appeals and

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[2] *Juneau Spruce Corp.*, 82 NLRB 650; *United Brotherhood of Carpenters and Joiners of America, et al.* (Stroh Brewery Co.), 88 NLRB No. 169; *United Brotherhood of Carpenters and Joiners of America, AFL et al.* (New London Mills, Inc.), 91 NLRB No. 86; *Truck Drivers and Chauffeurs Union, etc.* (Direct Transit Lines, Inc.), Case No. 13-CD-13, 92 NLRB No. 257.

found to be without basis. A review of these contentions will show that they are so completely lacking in merit or support as to present no substantial federal question.

The sole basis for Petitioners' contention that an action for damages will lie only for failure to comply with the Board's determination under Section 10(k), is the similarity of language used in Sections 8(b)(4)(D) and 303(a)(4). Petitioners argue that since a labor organization cannot be found guilty of an unfair labor practice under Section 8(b)(4)(D) unless it fails to comply with the Board's order under Section 10(k), it must necessarily follow that it has committed no unlawful act and therefore that it cannot be sued for damages under Section 303(b). But in making such contention, Petitioners ignore the fact that while Congress, by the enactment of Section 10(k), afforded labor organizations a means of escape from unfair labor practice charges under Section 8(b)(4)(D) by voluntary compliance with the Board's determination, it gave no such privilege to escape liability under Section 303 for damages caused by their unlawful acts.

The legislative history not only fails to support Petitioners' claim that a finding by the Board is a jurisdictional prerequisite to a damage action but actually shows to the contrary. Thus, Senator Morse, a member of the senate committee on Labor and Public Welfare, deplored the bill's method of dealing with jurisdictional disputes in the following language:

"I do want to make the additional argument against the Taft substitute, that it makes it possible for *two different district courts* and the *N.L.R.B.* to be dealing *simultaneously* with the same subject matter. The Board would be conducting a hearing looking to a cease-and-desist order. At the same time the Board would be required, to seek injunctive relief, which means that the (sic) would be two actions going on at the same time, or that there might be. * * *

"Finally, under this proposal, we have a third agency—probably a different Federal court—deciding whether a damage action lies. Such dispersion of authority, in my judgment, is very bad legislative policy." (Emphasis supplied) 2 Leg. Hist. 1358.

The President's veto message used the following language in criticising this portion of the Act:

"Moreover, since these cases would be taken directly into the court, they necessarily would be settled by the judiciary before the National Labor Relations Board had a chance to decide the issue. This would thwart the entire purpose of the National Labor Relations Act in establishing the Board, which purpose was to confer on the Board, rather than the courts, the power to decide complex questions of fact in a special field requiring expert knowledge." 1 Leg. Hist. 920.

Notwithstanding this criticism Congress passed the bill over the President's veto.

The provisions for damage actions found in Section 303 were added as a floor amendment to S. 1126 by Senator Taft (2 Leg. Hist. 1346, 1370). An earlier amendment proposed by Senator Ball contained identical provisions but also would have allowed employers to sue

for injunctions (2 Leg. Hist. 1323). The debates in the senate on these amendments indicate clearly that the purpose was to permit direct action in court by the injured party without awaiting action by the National Labor Relations Board, and the questions to be determined in such actions were regarded as purely factual (See statements by Senator Ball, 2 Leg. Hist. 1352-1356, statements by Senator Taft, 2 Leg. Hist. 1371, 1625, and statements by Senator Wherry, 2 Leg. Hist. 1353).

Petitioners attempt to bolster their argument that a Section 10(k) determination is a jurisdictional prerequisite to a damage action by pointing to incongruous results which they say might occur if a Board ruling under Section 10(k) should be contrary to the Court's ruling in a damage action. But as pointed out by the Court of Appeals, whether any of the incongruous results suggested would happen would depend to a large extent on the scope of the Board's determination under Section 10(k); and since the employer's assignment of the work is determinative, there can be no inconsistent rulings by the Board and the courts.

The fault in Petitioners' argument flows from their misconception of the function of the Board in a 10(k) proceeding. They seem to believe that the Board has the power to arbitrate jurisdictional disputes, to ignore the employer's assignment and determine for itself "who is entitled to the work." This conception of the law finds no support in the decisions of the Board or of any court. To the contrary, the Board has repeatedly held that Section 8(b)(4)(D) and Section 10(k) do not de-

prive an employer of the right to assign work to his own employees, or interfere with the employer's freedom to hire, subject only to the requirement against discrimination in Section 8(a)(3). In fact, in *Los Angeles Building and Construction Trades Council, et al.*, 83 NLRB 477, the Board, while finding that certain unions were not entitled to require Westinghouse Electric Corporation to assign work to their members, said:

> "We are not by this action to be regarded as 'assigning' the work in question to the Machinists. Because an affirmative award to either labor organization would be tantamount to allowing that organization to require Westinghouse to employ only its members and therefore to violate Section 8(a)(3) of the Act, we believe we can make no such award. In reaching this conclusion we are aware that the employer in most cases will have resolved, by his own employment policy, the question as to which organization shall be awarded the work. Under the statute as now drawn, however, we see no way in which we can, by Board reliance upon such factors as tradition or custom in the industry, overrule his determination in a situation of this particular character."

It is thus clear that the Board does not consider itself empowered in a 10(k) proceeding to make any affirmative award of disputed work. Any such power would be inconsistent with the protection which the law affords to the employer's assignment of work. Since the latter is determinative, there is no possibility of conflict between Board and court decisions as to "who is entitled to the work."

2. Petitioners are also in error in asserting that the decision of the Court of Appeals conflicts with the principle laid down by this Court in *International Brotherhood of Electrical Workers, etc. v. NLRB*, 341 U.S. 694, 71 S. Ct. 954, 95 L. Ed. 793, that identical language in Sections 8(b)(4)(D) and 303 is entitled to the same meaning. Petitioners seem to assume that because compliance with the Board's 10(k) determination will result in dismissal of an 8(b)(4)(D) charge, it must follow that no unfair labor practice is committed unless and until the union fails to comply with the 10(k) determination. Of course this simply is not true. The identical wording of the two sections means that the same activities are necessary to constitute the unlawful acts, but it does not mean that Congress could not provide for condonement of the unfair labor practice charge while preserving the right to damages.

Section 8(b)(4)(D) is the substantive provision which determines what constitutes the unfair labor practice. Section 10 contains the enforcement provisions and relates to nothing but procedure. Under Section 10(k) the Board is authorized when an 8(b)(4)(D) charge is filed, to "hear and determine the dispute out of which such unfair labor practice shall have arisen", unless a voluntary settlement is made in 10 days. If, after a 10(k) determination there is compliance with the determination, the unfair labor practice charge is dismissed.

Construing Sections 10(k) and 8(b)(4)(D) together, the Board holds that it must first hold a 10(k) hearing

and afford the parties an opportunity to comply with its determination before it can issue a complaint for violation of 8(b)(4)(D) under Section 10(b).[3] This fact, and the fact that the unfair labor practice charge is dismissed if there is compliance with the 10(k) determination does not mean that there never was a violation of 8(b)(4)(D). It merely means that Congress has provided a means for condonement of the offense, comparable to the dismissal of an indictment because the public interest does not require prosecution; or the refusal of an injunction because the wrongful acts have been discontinued. It does not mean that the unlawful acts described in 8(b)(4)(D) were not nevertheless committed.

It is thus clear that commission of the acts in question constituted here a violation of both Sections 8(b)(4)(D) and 303(a)(4). Petitioners could evade responsibility for commission of the unfair labor practice by complying with the Board's 10(k) determination, but Congress did not provide any comparable method of evading responsibility for the damages caused by their unlawful acts. Accordingly, the Court of Appeals has not given to the language in Section 303 a meaning different from that in Section 8(b)(4)(D).

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[3] *Moore Drydock Co.*, 81 NLRB 1108; *Juneau Spruce Corp.*, 82 NLRB 650.

CONCLUSION

Petitioners have failed to advance any substantial basis for their distorted construction of the statute. Their arguments are based primarily upon vague predictions of difficulties which might be encountered in hypothetical cases if the National Labor Relations Board and the Courts should reach contrary conclusions as to the ones entitled to disputed work. No such conflicts have yet arisen, nor can they arise in the future, for the reasons given by the Court of Appeals. The Petition for Writ of Certiorari should therefore be denied.

Respectfully submitted,

CHARLES A. HART,

Counsel for Respondent.

MANLEY B. STRAYER,
JAMES P. ROGERS,
HART, SPENCER, MCCULLOCH, ROCKWOOD AND DAVIES,

Of Counsel.

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RESPONDENT'S BRIEF

CHARLES A. HART,
1410 Yeon Building,
Portland 4, Oregon,
Counsel for Respondent.

MANLEY B. STRAYER,
JAMES P. ROGERS,

HART, SPENCER, MCCULLOCH, ROCKWOOD AND DAVIES,
1410 Yeon Building,
Portland 4, Oregon,

FAULKNER, BANFIELD & BOOCHEVER,
P. O. Box 1121,
Juneau, Alaska,
Of Counsel.

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 11-51

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In the Supreme Court

of the United States

No. 280

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION AND INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, LOCAL 16,

Petitioners,

v.

JUNEAU SPRUCE CORPORATION,

Respondent.

RESPONDENT'S BRIEF

OPINIONS BELOW

The opinion of the trial court overruling petitioners' demurrer, is reported in 83 F. Supp. 224. The opinion of the Court of Appeals is reported in 189 F. (2d) 177 (R. 1106).

QUESTIONS PRESENTED

1. Whether a right of action under Section 303(b) of the Act for the damages caused by the unlawful acts described in Section 303(a)(4) is dependent upon what

action may be taken by the National Labor Relations Board under Sections 8(b)(4)(D) and 10(k) of the Act.*

2. Whether the trial court erred in certain rulings on questions of jurisdiction, service of process and agency.

Petitioners do not question the propriety of such rulings if Section 301 of the Act was applicable to the trial court, and concede that the Section in question is applicable to "district courts of the United States." Accordingly this question, which is raised by petitioners' second specification of error, involves solution of the following questions:

a. Was the trial court a "district court of the United States" within the meaning of the Act?

b. If not, was Section 301 of the Act nevertheless applicable to the trial court in its capacity as "any other court having jurisdiction of the parties"?

c. If not, were the trial court's rulings nevertheless correct?

3. Whether the trial court should have instructed the jury on respondent's duty to bargain on petitioners' demands.

STATUTE INVOLVED

The statute upon which respondent predicated its action against petitioners is Section 303(a)(4) and (b)

*This was the sole question (divided into two parts), presented by petitioners as ground for granting the writ herein (Petition, p. 14).

of the Labor Management Relations Act, 1947 (Act of June 23, 1947, 61 Stat. 136, 29 U.S.C. (III) §187(a)(4) and (b), 29 U.S.C.A. §187(a)(4) and (b), which states that:

"Sec. 303 (a). It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—"

* * * * *

"(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

"(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

STATEMENT OF THE CASE

Petitioners' statement of the case seems designed to convey the impression that the issue litigated in the trial court was whether the members of their union were entitled to load respondent's barges. Certainly some of petitioners' statements would have no purpose but to imply that their members were entitled to such work and that respondent acted arbitrarily in refusing their demands. Because accuracy is involved we take issue with petitioners concerning the evidence in this regard while not conceding in the least its materiality to the real issues involved. Neither the trial court nor the Court of Appeals considered that the issue was between two unions contesting for work, for it was undisputed that respondent had assigned the loading of its barges to its regular sawmill employees and that petitioners had not been certified by the National Labor Relations Board as the bargaining representative of any of respondent's employees. Thus the statute's requirements were deemed below to have been completely satisfied.

Moreover petitioners' statement of the case contains inaccurate and misleading statements and resolves disputed questions of fact in favor of petitioners, although the verdict was for respondent. It therefore seems necessary to set forth a correct statement of the facts which were conceded or which the jury might have found from the evidence.

Early in 1947 respondent purchased from Juneau Lumber Mills, Inc., a sawmill and other properties in

Alaska, and on May 2, 1947, commenced operation of the sawmill at Juneau, Alaska (R. 114, 123). During the early stages of its operation the bulk of its sales were made to the Corps of Engineers, U. S. A. Delivery of the lumber was at respondent's mill; the lumber was taken away by Engineer personnel (R. 154). Some lumber was also sold to customers who shipped by commercial steamer, and a small amount was sold and delivered to fishing boats and cannery tenders. In these instances the loading was done by longshoremen as employees of the owners of the vessels (R. 155, 169-179). Where respondent's vessels were loaded from its dock respondent uniformly used its regular sawmill employees in such loading (R. 176-179).

In September, 1947, the Corps of Engineers canceled its contract (R. 183) with respondent. Respondent then acquired barges and suitable tugs for the purpose of taking its lumber to ports in the United States and Canada (R. 184). Because of limited storage space at respondent's mill for normal commercial needs the barges were also to serve as auxiliary storage yards, and respondent's lumber was loaded in normal course by its employees. This work was intermittent and an integral part of the sawmill operations (R. 186, 254, 255).

The contract under which respondent acquired the properties in Alaska expressly provided that respondent did not assume or accept any collective bargaining or labor agreements of its predecessor (Pl. Ex. 1, R. 114, 117). The employees at the sawmill had been represented by Local M-271 of International Woodworkers of

America (CIO), hereinafter sometimes referred to as I.W.A. Shortly after the commencement of operations the I.W.A. requested respondent to negotiate a contract with it (R. 125). Upon receiving satisfactory assurance that the I.W.A. represented a majority of its production employees respondent agreed to recognize it as their exclusive bargaining representative and commenced negotiations looking toward a contract (R. 129, 130, 144).

The contract between respondent and the I.W.A. was executed on November 3, 1947, and covered all production employees of the company at the mill, as is normal in CIO representation clauses (R. 130, 131, 302, Pl. Ex. 2). It was expressly understood that the contract's recognition clause covered yard employees in all their duties, including loading barges (R. 302, 303), and that the sawmill workers would load everything, including barges, where respondent's equipment was used (R. 302, 303, 357). This agreement was made after local I.W.A. officials had conferred with their International and had received from it an opinion that they were entitled to include employees performing such work within the coverage of the I.W.A. contract (R. 349, 550, 551, Pl. Exs. 8 and 9).

On several occasions prior to the execution of the contract between I.W.A. and respondent, representatives of both petitioners had requested that respondent execute "coastwise" and local contracts under which their members would be entitled to the loading of respondent's barges (R. 150-159, 161-165, 183, 188, 192, 574). They admitted, however, that they did not represent any of

respondent's employees (R. 192, 298). They were told that respondent had recognized the I.W.A. as the exclusive bargaining representative for all of its production employees at its mill (R. 160, 189) and that it could not and would not contract with any other union (R. 299).

The first barge load of lumber was loaded by respondent's employees and shipped in October, 1947. Although threats were made by the longshoremen that this barge would not be unloaded (R. 221, 299), it was in fact unloaded without incident. The mill was closed during the winter months of 1947-1948, but in March, 1948, respondent commenced to accumulate a load of lumber on another barge (R. 202). At this time representatives of petitioner Local 16 called upon respondent and again demanded the work of loading the barges (R. 200, 201, 202).* When this request was again refused, representatives of Local 16 presented its claim at a meeting of the I.W.A. (R. 391).

During the interim between the execution of the contract with respondent and the time of the meeting the officers of the I.W.A. had changed and the new officers were not aware that their predecessors had been expressly authorized by the I.W.A. international office to include the work of barge loading in their contract with respondent (R. 262). The longshoremen's representatives at the meeting referred to announced their intention to

*The loading of respondent's barges by its employees did not "divert work" from petitioners' members or cause reduction in their income. It was newly created work, since Army personnel had previously removed the lumber from petitioners' mill during the term of the contract with the Corps of Engineers (R. 154).

establish a picket line at respondent's plant if they could not induce respondent to give them the barge loading work, and asked the I.W.A. to respect the picket line when established (R. 396, 397). By false representations they prevailed upon respondent's employees to give up the barge loading work and respect the picket line "until more could be found out about the situation" (R. 393-397, 414).

The barge loading was only an intermittent part of all the work at the mill and the jobs of over 200 men were at stake (R. 257, 484). The members of the I.W.A. agreed to accede to the I.L.W.U. demand because they feared the mill would be shut down and they would lose their jobs (R. 339, 484); because they wished to avoid trouble (R. 849); because they feared violence if they should go through the picket line (R. 849, 873); because they feared the effect of being blacklisted (R. 848); and because they were deceived by petitioners into the belief that the longshoremen had a contract with respondent which entitled them to the work (R. 263, 407, 843).

When respondent refused to accede to the demands of the longshoremen, a picket line was established at its plant on April 10, 1948 (R. 207). Respondent's employees refused to cross the picket line and the mill shut down (R. 259, 310).

Following the closing of the mill continuing efforts were made to induce the longshoremen to remove the pickets and permit the mill to operate. The Mayor of Juneau appointed a fact-finding committee to investigate and attempt to resolve the dispute (R. 964). A repre-

sentative of petitioners, Verne Albright, attacked the Mayor's recommendation as "an employer-inspired publicity dodge" (Pl. Ex. 17, R. 780, 781). It was proposed that the dispute be submitted to the National C.I.O. Council, but Albright rejected this suggestion also (R. 426). An officer from the international office of the I.W.A. and a representative of the United States Mediation and Conciliation Service came to Juneau to attempt a settlement (R. 417, 418). A proposal was made to them by respondent which might have resolved the dispute, but at the last moment it was rejected by Albright on orders from the San Francisco headquarters of the I.L.W.U., because it was felt that the settlement might establish a bad precedent for the longshoremen (Pl. Ex. 6, R. 419-426). Throughout the period petitioners maintained a pretense of desiring to "negotiate," but they meant by use of that term nothing but capitulation to their demands (R. 525-528).

During the time the mill was closed Albright, the I.L.W.U. International representative for Alaska, acted as spokesman for the longshoremen (R. 432). He addressed meetings of respondent's employees, urging them not to cross the picket line, advising them that if they did so they would be "blackballed" and that in any event their jobs would be temporary because the company would be unable to unload its lumber in the States (R. 443, 444).

Respondent's employees were anxious to return to work, but were uncertain whether they should do so (R. 539, 541). They had discovered that the representations

made by petitioners to induce them to relinquish the barge loading and to respect the picket line were in fact false (R. 414). Nevertheless, petitioners refused to remove the picket line except upon their own terms (R. 431-433). About July 2, 1948, the members of the I.W.A. voted to return to work and to claim the right to load the barges (R. 438, 441). This was not (as stated in the petition) the first claim which I.W.A. made to the work. It was a reaffirmance of the original position of that union (R. 302, 303, 349, 352, Pl. Exs. 8 and 9, R. 551).

The mill reopened on July 19, 1948, with a small crew, but the picketing and other activities of petitioners continued. Albright thereupon branded the sawmill workers who had returned to work as strikebreakers (R. 958-962, 780, 781, Pl. Exs. 17, 18, R. 779-782; Pl. Ex. 23, R. 958-961). Germain Bulcke, vice president of the I.L.W.U., notified all Canadian locals of the I.L.W.U. that Juneau Spruce products were unfair and this information was publicized in the official I.L.W.U. newspaper (Pl. Ex. 23, R. 973-978). Longshoremen refused to load any of respondent's products on commercial steamers (R. 285, 294).

In August, 1948, a barge was loaded with lumber by respondent's employees, and departed for Prince Rupert, B. C. Threats were made that the barge would be followed (R. 763). Albright and another I.L.W.U. representative were in Prince Rupert when the barge arrived (R. 787, 788). The longshoremen in Prince Rupert refused to unload the barge, acting upon orders from John Berry, International representative of I.L.W.U. for Brit-

ish Columbia, who, in turn, was acting on orders from I.L.W.U. headquarters in San Francisco (R. 620-627). Respondent was forced to move the barge to Tacoma, Washington, one of the few Pacific Coast ports not controlled by I.L.W.U., and succeeded in getting it unloaded there (R. 687, 974). But when respondent sent a second barge load of its lumber to Tacoma in September, 1948, it discovered that even this port was closed to it. The barge remained in Tacoma and was not unloaded until during the course of the trial over six months later (R. 437, 438, 687).

As a result of its inability to unload any of its lumber respondent exhausted its storage space and was again forced to close the sawmill on October 11, 1948 (R. 696).

In October or November, 1948, representatives of petitioners called on respondent and stated that they wished to negotiate on the barge-loading issue (R. 703, 730). Respondent's manager informed them that if the I.L.W.U. could agree with the I.W.A. on some practical basis, he would recommend to respondent that it be accepted (R. 705). But this proposal came to naught. When petitioners met with the I.W.A. they increased their demands to include not only the actual loading of respondent's barges, but also demanded sling men on the dock (R. 544-547).

At the time of trial, despite a ruling by the National Labor Relations Board, dated April 1, 1949, that the longshoremen were not entitled to the work in question (82 NLRB 650), the unlawful activities of petitioners continued. Picketing still went on at respondent's plant

(R. 411), and on May 2, 1949, while the trial was in progress, John Berry, acting on orders received from I.L.W.U. headquarters at San Francisco, again refused to permit lumber to be unloaded at Prince Rupert (R. 626).*

The unlawful activities of petitioners, in seeking to force respondent to displace a small portion of its I.W.A.-represented employees for the benefit of petitioners' members, caused damage to respondent alone in excess of $1,000,000 (R. 742, 759; Pl. Exs. 14, 15). These figures did not take into consideration other substantial items such as loss of markets, damage to retail business, and deterioration in lumber and log stocks (R. 717, 758).

SUMMARY OF ARGUMENT

I. A cause of action under Section 303(b) of the Act depends only upon the commission of the actions therein proscribed and is not dependent upon any action taken by the National Labor Relations Board.

A. The Act bears intrinsic evidence that there was to be a clear separation of private rights and public enforcement proceedings. This is disclosed by the language used and the fact that private remedies were placed in a separate title in which all subjects described were outside of the Board's orbit.

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*The pickets were not removed until May 9, 1949, shortly before the Regional Director's anticipated application for an injunction (*Bulcke et al v. Graham, Regional Director*, 91 F. Supp. 615), which was issued on May 14, 1949. (*Juneau Spruce Corp.*, 90 NLRB, No. 233, Note 5).

B. The legislative history of the Act shows that the primary purpose of Congress was to *prevent* jurisdictional strikes and secondary boycotts. Originally this was to be accomplished by making them unfair labor practices and giving the Board power to enforce the prohibition.

Because it was felt that this machinery might not be sufficient to *prevent* them, the right to a damage action was added as an additional deterrent. Another primary reason for giving the right to seek damages was the belief in Congress that if such acts should be committed, a party injured by such practices should have a speedy and direct remedy rather than to be dependent upon an administrative agency. Both of these purposes of Congress would be frustrated if the damage action must await prior Board action.

Moreover, petitioners' contention is built entirely upon its misconception of the power of the Board in jurisdictional strikes cases. Originally it was to have the right to arbitrate disputes between unions over the right to do particular work. But this power was lost when Section 8(b)(4)(D) was changed from protection of the union's jurisdiction to protection of the employer's work assignment. As the law now stands, where an employer's assignment is involved, the Board acts under Section 10(k) not as an arbitrator but in a purely ministerial capacity.

A violation of Section 8(b)(4)(D) and Section 303 (a)(4) is complete upon commission of the acts therein

mentioned since each contains a complete description of the conduct proscribed. When petitioners state that the unfair labor practice is defined by Section 8(b)(4)(D), taken together with Section 10(k), they confuse substance with procedure, for the latter section deals only with procedure after a charge is made that Section 8(b)(4)(D) *has been violated*.

C. The construction placed on the Act by the Board supports respondent's views. Where an employer's assignment of work is involved the Board has disclaimed arbitration powers, and has regarded the assignment as determinative. *Juneau Spruce Corp.*, 82 N.L.R.B. 650; *Los Angeles Bldg. and Construction Trades Council*, 83 N.L.R.B. 477. Only where the employer stands neutral and in effect requests the Board to make the assignment has the Board arbitrated jurisdictional disputes. *Winslow Bros. and Smith*, 90 N.L.R.B. 1379.

The Board has not held that a violation of Section 8(b)(4)(D) occurs only upon noncompliance with its determination under Section 10(k). It holds merely that there must be such noncompliance before a cease-and-desist order will issue.

D. The Court of Appeals' construction of the Act does not produce inconsistent or unreasonable results. Petitioners' prediction that the Board and the courts may reach contradictory results cannot occur since (absent a certification) the employer's assignment is determinative and will not be altered by the Board.

Even if the Board possessed power to disregard the

employer's assignment, it would not be inconsistent or unreasonable to forbid jurisdictional strikes under penalty of liability for damages pending Board action under Section 10(k). Congress intended to *prevent* jurisdictional strikes and Section 10(k) only dealt with procedure if they should nevertheless occur. The right to a damage action was also intended to *prevent* such strikes and compel resort to lawful procedures, whether through the Board or otherwise. It would have no deterrent effect if dependent upon later Board action.

II. The rulings of the trial court on matters of jurisdiction, service of process and agency were correct.

A. Petitioners concede that the rulings were proper if the trial court was a "district court of the United States" within the meaning of the Act. The diverse methods employed to describe the Federal courts throughout the Act indicate that the term was not used as one of art to describe only courts created under Article III of the Constitution.

The term is not always used to describe only Constitutional courts but has been used to describe territorial courts as well. *In Re Cooper*, 143 U.S. 472, 494, 12 S.Ct. 543; Section 451, Title 28 U.S.C. The Act here refers to such courts in Sections 11(2) and 302(e) as "United States courts of the Territories."

An interpretation of the term as used here to exclude territorial courts would lead to unreasonable results by withholding machinery for enforcement in the territories. In such cases the court will "look beyond the words to

the purpose of the Act", and hold the term to include territorial courts. *United States v. American Trucking Assns.*, 310 U.S. 534, 60 S.Ct. 1059; *Federal Trade Commission v. Klesner*, 274 U.S. 145, 47 S.Ct. 557.

B. In any event the limitations and provisions of Section 301 of the Act applied to the trial court in its capacity as "any other court having jurisdiction of the parties", referred to in Section 303(b). Petitioners concede that the Alaska court may be so classified but contend that the phrase in Section 303(b) reading "subject to the limitations and provisions of Section 301" applies only to actions in "district courts of the United States."

As so interpreted the Act would have the result of rendering members of labor unions personally liable on judgments in state and territorial courts while relieving them from such liability in district courts of the United States. This absurd result in violation of the obvious intent of Congress can only be avoided by recognizing that the qualifying phrase in question was inadvertently inserted *between* the designations of courts instead of *after* such designations.

C. The rulings of the trial court were correct in any event as they complied with general law applicable in Alaska.

III. The trial court did not err by refusing to give petitioners' proposed instructions. Requested instructions 1, 12 and 13 consisted of misleading and abstract quotations inapplicable to the issues in the case.

Requested instruction 2 was also misleading and ab-

stract. It improperly implied, with no supporting evidence, that respondent had refused to bargain with IWA, that it was required to forego rights under its labor contract and to discriminate against employees in violation of law.

ARGUMENT

I. THE ONLY PREREQUISITE TO A CAUSE OF ACTION UNDER SECTION 303(b) OF THE ACT IS THE COMMISSION OF THE ACTS DESCRIBED IN SECTION 303(a).

The cumulative effect of the petition herein and petitioners' brief is to create a false aura around the issues for decision here, the decision below, and the facts. Petitioners would apparently seek to obtain from this Court an advisory decision on a hypothetical set of facts. Because inherently fallacious hypotheses permeate every phase of petitioners' argument in both their petition and brief, clarification at the outset of the issues and the facts will set at rest the difficulties petitioners create for the administration of the law as a result of the decision below. These difficulties arise from questions not raised or decided below and facts not in the case.

For example, on page 6 of the petition it is said that one of the questions for determination of this Court is

> "Whether a labor organization, whose claim that the employees it represents are entitled to perform particular work is upheld by the Board in a determination under Section 10(k), can nevertheless be

> sued for damages for primary activities directed at compelling the employer involved to abide by the Board's award."

On page 17 of the petition it is said that the Court of Appeals

> "* * * determined that a union which engaged in a primary strike against an employer to require him to assign particular work to employees whom it represented was liable for any damages caused, even if the Board had previously determined in a proceeding under Section 10(k) that the employees represented by the striking union were entitled to the work."

Such statements are neither apt nor candid. They pose interesting questions when and if a case in which they were presented should ever arise, but they have no relation whatever to this case, because

First, petitioners represented no employees of respondent but were mere interlopers seeking to force discriminatory conduct by respondent harmful to its employees who were represented by a union of their choice;

Second, the petitioners were never held by the Board in a 10(k) proceeding to be entitled to the barge-loading work involved, the Board instead having expressly rejected their contentions (82 NLRB 650);

Third, the petitioners' activities for which damages were sought by respondent were not simply "primary" but were "secondary" because the injury caused respondent was due in large part to its inability to get the employees of other employers (members of petitioners) to handle its products.

Even a summary of a portion of the statute set out in petitioners' brief last filed is not free from the same misleading implications. On page 3 they summarize in advance Section 10(k) of the National Labor Relations Act (29 U.S.C.A. §160(k)) by saying that under it the National Labor Relations Board

> "* * * determines which employees in a jurisdictional dispute are entitled to particular work * * *"

Such a condensation of the statute's language is at least out of place in this case. It is only in rare instances, if at all, that the Board makes such a decision. And again the inference from this language, when placed in this case, is that petitioners represented employees of respondent and could thus rightly claim before the Board the work of loading respondent's barges. Such an inference is completely false.

Accordingly, the only issue here is whether a person can maintain an action under Section 303(b) against a labor organization representing none of his employees for damages caused by activities clearly in violation of Section 303(a)(4) without awaiting the outcome of proceedings by the Board under Title I of the Act.

In the discussion which follows the Labor Management Relations Act will sometimes be referred to as "the Act" in order to distinguish it from one of its separate parts, the National Labor Relations Act. The latter will sometimes be referred to as the "NLRA."

A. The Act Itself Contains Intrinsic Evidence That Actions for Damages Under Title III Were Not to Be Dependent Upon Action of the Board Under Title I.

The meaning of the statute here involved is complicated only as petitioners in their brief make it so. Respondent brought an action against petitioners under Section 303(b) of the Labor Management Relations Act, 1947 (Act of June 23, 1947, 61 Stat. 136, P.L. 101, 80 Cong. 1 Sess., 29 U.S.C. (Supp. III) §187(b)), alleging facts bringing petitioners' conduct within the description of Section 303(a)(4) of that Act (29 U.S.C. (Supp. III) §187(a)(4)). This case, then, involves only the following statutory language:

> "Sec. 303(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is —"
>
> * * * * *
>
> "(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make un-

lawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

"(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

By its terms, the statute upon which respondent's action was predicated stands completely alone. It depends for its sustenance upon no other part of the comprehensive Act in which it is found. It is in its language a complete and self-executing whole.

But petitioners contend that this Court must supply what Congress did not—a connective between this and other portions of the Act which would transform this independent cause of action into a complete parasite, having no life in itself but drawing its only vitality from an agency which was quite evidently believed by Congress to act expeditiously only under statutory prodding.[1]

[1] "Because of the nature of certain of these practices, especially jurisdictional disputes, and secondary boycotts and strikes for specifically defined objectives, the committee is convinced that additional procedures must be made available under the National Labor Relations Act in order adequately to protect the public welfare which is inextricably involved in labor disputes.

"Time is usually of the essence in these matters, and consequently *the relatively slow procedure of Board hearing and order, fol-*

The fact, say petitioners, that Congress did not say that the cause of action allowed by Section 303(b) must be conditioned on what, if any, action the General Counsel might take and what the National Labor Relations Board might then decide, is of little consequence. Despite that lack this Court must now supply it because: (1) Section 303(a)(4) of the Act and Section 8(b)(4)(D) of the National Labor Relations Act read exactly the same; and (2) it would be awkward, and contrary to the Act's construction if it were possible to have the same proscribed activity before the Board and the Courts at the same time.

As we shall show, these contentions are without merit.

1. The Plain Language of the Act Authorizes Actions for Damages Without Awaiting Action of the Board.

As we have stated, there is no ambiguity in the language employed in Section 303 of the Act, which says nothing of there being other conditions precedent to an action for damages. If Congress had so intended, it would have been easy for it to have said so. In similar circumstances this Court met a plea to change the terms of a

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lowed many months later by an enforcing decree of the circuit court of appeals, falls short of achieving the desired objectives—the prompt elimination of the obstructions to the free flow of commerce and encouragement of the practice and procedure of free and private collective bargaining." (Emphasis added.) Senate Report No. 105 on S. 1126, 1 Leg. Hist. 414.

(Like petitioners, respondent believes the most satisfactory reference to the legislative history of the Labor Management Relations Act, 1947, to be the two-volume history published by the National Labor Relations Board. All references hereafter entitled "..... Leg. Hist. ....." will be to this work.)

statute with these words:

> "If Congress had deemed it necessary or even appropriate that the Administrator's orders should in effect be final in construing the scope of the national price-fixing policy, it would not have been at a loss for words to say so." *Davies Warehouse Co. v. Bowles*, 321 U.S. 144, 64 S.Ct. 474.

This is not to say that the courts should deem themselves bound by the literal wording of a statute even where to do so will obviously frustrate the legislative intent. But where, as here, the language used is apparently plain and unambiguous it should not lightly be assumed that Congress did not mean what it said.

2. The Duplication of Language in Sections 303(a) and 8(b)(4) Shows That Completely Separate Remedies Were Intended.

The identity of the language found in Sections 8(b)(4)(D) and 303(a)(4), instead of showing an inter-relation between the sections, actually confirms our contention that the remedies therein provided were to be independent of each other. If petitioners were correct in their contentions, the simple and logical way of accomplishing the objective would have been to provide in Section 303 that an action for damages would lie for the commission of the acts described in Section 8(b)(4).

The fact that the statute was not so worded indicates an apprehension on the part of the sponsors of the legislation that the result might be precisely what petitioners now claim, namely, that private rights and remedies would be made dependent upon action by the Board. The

simple and logical way to forestall this result was to make Section 303 complete within itself by spelling out therein the specific acts which Congress wished to make unlawful, in order that no one be misled into the belief that these rights and remedies were subordinate to the powers of the Board. We shall hereafter point out that this was exactly what Congress wished to accomplish.

3. As Drafted Title III of the Act Deals Only With Subjects Outside the Ambit of the Board's Responsibilities and Powers.

In drafting the Labor Management Relations Act, 1947, the framers, instead of proceeding by separate bills, elected to employ one comprehensive bill divided into distinct titles, although this course was deplored by some of the Act's critics.[2] Title I amended the previous National Labor Relations Act, even giving this Title of the bill its own separate "short title" (Title I, Sec. 17). Title II stated Federal policy in, and provided new machinery for, the peaceful settlement of those disputes which sometimes arise at the bargaining table after the parties have freely come there, especially in those disputes which create national emergencies. Title III dealt with practices which, while in the generalized field of "labor law,"

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[2] From Senator Thomas' Separate Report on S. 1126 (1 Leg. Hist. 455): "It would make better sense not to lump unrelated subjects into one omnibus bill * * *

"I believe the majority party acted unwisely in not following my suggestion of several bills for several subjects * * *"

Senator Morse on the floor (2 Leg. Hist. 1507):

"I deeply regret that the Senate did not see fit to proceed with labor legislation one issue at a time, by way of one title at a time; * * *".

are wholly apart from organization and bargaining procedures and their occasional consequences treated in the preceding two titles. Title IV set up a Congressional committee to study the entire field of labor-management relations and its impact on the national welfare. Title V simply provided definitions for Titles II, III, and IV.

Title III, in which Section 303 appears, was intended to and did embrace subjects which Congress completely removed from the scope of Title I, and therefore from any control by the Board. One of the most conclusive indications of this scheme is the treatment accorded violations of labor contracts. When Senator Morse thought these should be made punishable, but only as unfair labor practices,[3] the framers finally agreed that a deterrent should be provided against such practices;[4] but over his protest[5] placed the matter beyond reach of the Board by taking it out of Title I and leaving it instead wholly in Title III as Section 301(a) of the Act.

Likewise, when dealing with the "involuntary checkoff" and prohibiting it by providing that deductions for union dues and initiation fees could be made only if the employee authorized such a deduction in writing, Congress did not place the decision within the purview of the Board by calling it an unfair labor practice. Instead it included the prohibition in Title III of the Act.[6] So also for the regulation of "union welfare" funds, the Board

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[3]S. 858 (the so-called "Morse bill") Sections 8(a)(6) and 8(b)(5): 2 Leg. Hist. 982.

[4]This provision of the Morse bill was included in S. 1126 as reported, 2 Leg. Hist. 440, 441.

[5]2 Leg. Hist. 1558.

[6]Section 302(c)(4).

was not included in the machinery provided for determination or enforcement of the prohibition.

Thus the scheme of Title III is clear. Whatever effects its prohibitions may have on representation and bargaining dealt with in Title I, none of the remedies in Title III are to be qualified in any respect by any rights or duties of the parties involved as defined by Title I's amendment to the National Labor Relations Act, or by any determination of the Board, except where specifically so stated.

That there are some effects of Title III on the Board's duties, and the rights and duties of the parties under Title I, is apparent. The requirements for validity of "health and welfare" funds undoubtedly inhibit some aspects of bargaining at the conference table. So also with the denial of the involuntary check-off. But the lack of dependence of any of the provisions of Title III on any of the procedures to control unfair labor practices under Title I is completely shown by the terms of Title III.

The involuntary check-off is not forbidden only if the Board finds it results in coercion or domination under Title I although Congress might have so provided, since such check-offs had sometimes been found objectionable by the Board on such grounds.[7] Instead these were prohibited by Title III. And in regulating "health and welfare" contracts Congress could have given expression to its evident fears that agreements in this field might be used for purposes of domination or coercion of employees and prohibited only such as the Board held did

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[7] *Virginia Electric and Power Co. v. N.L.R.B.*, 319 U.S. 533, 63 S.Ct. 1214, affirming 44 N.L.R.B. 404; *Food Machinery Corp.*, 41 N.L.R.B. 1428.

so. But it chose to lay down a flat prohibition in Title III instead of solving the problem by leaving it to the Board for preliminary determination under Title I.

These actions of Congress in framing the terms of Title III demonstrate clearly that the pattern followed with respect to causes of action for jurisdictional disputes and secondary boycotts were, by inclusion in that Title, meant to be independent of Board action under Title I. It would be strange indeed if by silence in this lone instance Congress meant to make this activity dependent on the action of the Board where that same silence in every other instance indicated the clearest of intention to divorce the matter from anything prescribed in the National Labor Relations Act.

4. The Absence from Section 303(b) of Any Reference to Section 8(b)(4)(D) of the N.L.R.A. Was Not an Oversight.

While the comment of the court below in *Printing Specialties, etc., Union v. LeBaron*, 171 F.(2d) 331 that "* * * the statute is by no means a model of draftsmanship, * * *" is borne out by many of the terms and descriptions used, notably in its varying descriptions of the courts Congress had created, it is quite evident that this legislation was carefully conceived and drawn insofar as its internal organization was concerned. Its attention to detail was clear in the field — and only, perhaps, in the field — of back-reference and inclusion or exclusion of other acts or sections of the Act.

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[8]2 Leg. Hist. 1304, 1310-1313.

This care is especially well illustrated in the relations between Titles I and III. A great majority of Congress thought that in this Act the injunctive powers of the Federal courts should be restored in secondary boycott and jurisdictional dispute cases, but divided on whether injunctions should issue at the request only of the appropriate Federal agency or, in addition, at the behest of the injured party. The former view prevailed.[9]

But in allowing "any person injured" an action for damages which arose from a jurisdictional dispute or secondary boycott Congress was very careful by its silence to make it clear that no court would construe the provision for such a cause of action to mean that the Norris-LaGuardia Act was inadvertently amended thereby. So while in Title I Congress was careful to retain the previous Act's statement of inapplicability of the Norris-LaGuardia Act in cases where the Board seeks injunctions[10] in these as well as other unfair labor practices, and to insert in Title II a corresponding provision for a "national emergency" strike injunction,[11] it was careful *not* to insert any language in Section 303 which would yield a comparable result. There can be no doubt that this silence was deliberate.[12] Two courts of

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[9]The "Taft Amendment," eliminating the injunctive features of the "Ball Amendment," was enacted 2 Leg. Hist. 1400, after the Ball Amendment was defeated, 2 Leg. Hist. 1370.

[10]Section 10(h).

[11]Section 206(b).

[12]Mr. Taft, " * * * Whatever may be the fact as to what relief courts will give in civil suits for damages or otherwise, obviously, the amendment still remains subject to the Norris-LaGuardia Act * * * "

appeal have had no difficulty in finding from it the result Congress clearly intended,[13] and this court has disposed of a contrary contention in summary fashion.[14]

This selectivity in the Act's silences is not accidental. Meaning was given by what was not said as well as words themselves. Thus to contend, as petitioners must, that the omission of a connective between Section 303(b) and Section 8(b)(4)(D) was an inadvertence flies in the face of every requisite for ascertaining meaning from the text of the statute itself.

B. The Legislative History of the Act Discloses That Actions for Damages Under Title III Were Not to Be Dependent Upon Action of the Board Under Title I.

The plain language of the Act shows, as the Court of Appeals noted, that there is no reason to presume that Congress intended an adverse and disregarded National Labor Relations Board determination to be a condition precedent to liability under Section 303(b) of the Act. Nevertheless an inquiry into the legislative history confirms the view of the court below that no prior determination of the Board is required to precede an action for damages under Section 303(b).

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[13] *Amazon Cotton Mill Co. v. Textile Workers Union* (CA 4, 1948), 167 F. (2d) 183; *Amalgamated Association, etc. v. Dixie Motor Coach Assn.* (CA 8, 1948), 170 F. (2d) 902.

[14] *Bakery Sales Drivers Local, etc. v. Wagshal*, 333 U.S. 437, 442, 68 S.Ct. 630.

1. Congress Clearly Intended That Actions Under Section 303 Be Independent of the Board's Action Under Sections 8(b)(4)(D) and 10(k).

As the face of the Act discloses, there are at least three reasons why petitioners' concept of the statute, as applied to the case here, is not tenable: (1) No such limitation is stated in Section 303(b); (2) the identity of language in Sections 303(a) and 8(b)(4)(D) discloses an intent *not* to make the former refer to the latter, rather than the contrary; and (3) the placing of Section 303 in a separate title from Section 8(b)(4)(D), indicates an intent to exclude for all of its subjects any connection with procedures of the National Labor Relations Board or the preliminaries or processes of collective bargaining. The history of this Section as it found its way into the Act completely confirms the plain reading of the statute in these respects.[17]

When Congress began its work on the legislation which became the Labor-Management Relations Act, 1947, it had in mind control of two types of union activity then unrestrained: (1) unfair labor practices of the kind defined under the "Wagner Act" (Act of July 5, 1935, 49 Stat. 449) as harmful to collective bargaining processes and the free choice of representatives for that function; and (2) practices only indirectly connected with the bargaining table or freely arriving there,

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[17]Petitioners' references to statements they apparently believe demonstrate the contrary, found at pp. 23 and 24 of their brief, disclose only that the description of the activity proscribed was intended to be the same. But no word in them, especially if they are put in true context, discloses the conception of Section 303 petitioners claim for them.

and involving principally a struggle for union advantage, in which third parties in the form of employee hostages, employers, and the general public suffered the major share of the damage without resourse to the Board or the courts.[18]

The kind first described caused relatively little difficulty, being added to the list of unfair labor practices for the Board's attention under Section 8 of the National Labor Relations Act, which was to become Title I of the new Act. But the second class of activity caused concern, from description to treatment. The House called them (jurisdictional strikes and secondary boycotts) "unlawful concerted activities"[19] and would have banned them completely by prescribing severe penalties for their commission.[20] The Senate bill as reported to the floor, however, dealt more gently with them by adding them to the unfair labor practice section of Title I of the new bill, thus making their prevention a function of the Board.[21]

But the feeling was strong, even within the Senate Committee on Labor and Public Welfare, that this one deterrent was insufficient.[22] Accordingly, Senators Ball, Byrd, Donnell and George introduced as Section 303 of Title III in the bill an amendment,[23] here referred to as

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[18] *United States v. Hutcheson*, 312 U.S. 219, 61 S.Ct. 463, 85 L. Ed. 819; *N.L.R.B. v. Gluek Brewing Company*, 144 F. (2) 847.
[19] H.R. 3020, 80th Cong., 1 Sess., §12(a)(3), as passed.
[20] H.R. 3020, 80th Cong., 1 Sess., §12(b), (c), and (d), as passed.
[21] S. 1126, 80th Cong., 1 Sess., §8(b)(4).
[22] Supplemental views on S. 1126, Part 4, by Senators Taft, Ball, Donnell and Jenner. (1 Leg. Hist. 460.)
[23] 2 Leg. Hist. 1323.

the "Ball amendment," which copied the description of jurisdictional strikes and secondary boycotts from Section 8(b)(4)(D) of Title I, but superimposed new remedies in addition to those provided for within the confines of Board action. This amendment gave the person injured both the right to seek injunctive relief and the right to sue the offenders for damages. Senator Taft immediately introduced an amendment in the nature of a substitute which retained only the latter right[24] and the two were at this juncture frequently considered together.[25]

The intention of the sponsors of the Ball amendment that the additional remedies authorized in this class of cases was to be in addition to, and not dependent on, whatever the Board did with secondary boycott and jurisdictional dispute charges under Section 8(b)(4), is clear beyond any doubt. In the explanation of this amendment to be proposed, the writers of the supplemental views on S. 1126 (Senate Report 105) said:[26]

> "There appears to be virtually no disagreement as to the complete injustice of secondary boycotts and jurisdictional strikes, or as to the necessity of giving injured third parties a remedy against their operation * * * To a small storekeeper, or machine shop, picketed out of business by unions intervening between him and his employees, or to the farmer prevented from unloading his perishable produce, the remedy of dealing with the National Labor Relations Board is a weak reed. There will only be a

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[24] 2 Leg. Hist. 1346.

[25] See 2 Leg. Hist. 1357, where Senator Morse expressed his opposition to both the Ball amendment and its substitute.

[26] 1 Leg. Hist. 460.

satisfactory remedy if he can go to his local court and obtain an injunction, first temporary and then permanent, against interference of this kind."

* * * * *

"The amendment proposes that he be entitled to file a suit for damages and obtain a temporary injunction while that suit is being heard."

When the proposed amendment was debated on the floor it was clear to all Senators that it provided remedies against this limited class of activity which would enable the injured party to obtain his own relief both by injunction and by a damage action, irrespective of what the Board did with a charge for the same offense. In fact, the great benefit the proponents saw in the amendment was that it gave the right to injured parties to control their own litigation and thus avoided the delay and uncertainties they felt inherent in Board action in these cases, in which injury was so grievous and delay so destructive. In explaining his amendment Senator Ball said:

"The amendment deals with secondary boycotts and jurisdictional strikes, which are universally condemned. I think the committee bill deals with them one way. It is proposed in the amendment to deal with them in a different way.

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"So there is no difference between the definition of secondary boycott and jurisdictional strike in the pending amendment and the definition in the committee bill. *The difference lies wholly in the remedy proposed.*"[27] (Emphasis supplied.)

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[27] 2 Leg. Hist. 1347,

"'The committee bill and the proposed amendment differ also in this respect: First, under the amendment an injured party—and he is usually an innocent third party—suffering from a secondary boycott or jurisdictional strike, is given the right to go directly into a district court and seek injunctive relief, whereas, under the committee bill, such an individual is forced to go through a bureaucracy, the National Labor Relations Board, and let the regional attorney for the National Labor Relations Board decide whether his case should be presented to the court. The committee bill gives the court final jurisdiction * * *.

"I have said that the pending amendment would simply give to those employees and to their employers the right to go directly into court to protect their right to freedom from this kind of racketeering pressure, whereas the committee bill routes them through a bureaucracy, and that bureaucracy possesses the right to say whether the court shall finally pass upon the merits of the case."[28]

"The pending amendment would change the committee bill in two other respects. First, the language in subsection (c) would permit any person injured by such racketeering practices to sue and to recover damages actually suffered and the cost of the suit. That is similar to the provision of the Taft substitute."[29]

After a colloquy with Senator Donnell, Senator Wherry said:

"Mr. Wherry. I wish to thank the distinguished Senator from Missouri for bringing out that point so clearly, because it seems to me that the person concerned should control his own rights of litigation, and should not have to depend, when it comes to

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[28] 2 Leg. Hist. 1350.
[29] 2 Leg. Hist. 1353.

the question of going into a court of law and applying for damages or for injunctive relief, upon the judgment of some bureaucrat in whom is lodged the power to determine whether such a course should be followed.

"This amendment, as I understand, would permit a person to go into any court and there use his own judgment in regard to the question of applying for injunctive relief or in regard to the question of whether he should sue for damages. Am I correct about that?

"Mr. Ball. That is correct."

While the provision of the Ball amendment relating to the rights of private persons to seek injunctive relief stirred up a storm of controversy, the other provision of the amendment relating to the other independent right of the injured party to sue for damages when injured by jurisdictional strikes or secondary boycotts, was generally approved. Senator Ives, a member of the Senate Committee on Labor and Public Welfare, was strongly of this view. He stated very clearly[30] that he was opposed to the Ball amendment because it revived the injunction upon request of an employer, and also that the Committee bill

"* * * would be sufficient without the injunctive procedure proposed by the Senator from Minnesota."

But he continued[31]

"As I understand, a substitute amendment will be offered, to authorize the bringing of actions for damages in the Federal courts under certain conditions

[30] 2 Leg. Hist. 1356.
[31] 2 Leg. Hist. 1357.

> as I have indicated. I know of no reason in the world why actions for damages should not be permitted in the Federal court. That is perfect legitimate. I know of no reason in the world why one suffering from such abuses or violations should not have the right to recover damages, not only in the Federal court, but in any court."

Then referring to Senator Wherry's expressed view, above quoted, that an injured party should not have to depend upon the judgment of an administrative officer whether he should seek relief in a court of law, Senator Ives said:

> "I want to point out to the Senator from Nebraska, and any other Senators who may have made the point, that in my judgment the right to recovery as proposed in the amendment offered by the Senator from Ohio will take care of the situation about which the Senator from Nebraska inquired. Once it is established that recovery may be had for damages in the Federal courts, it will go a long way toward stopping the jurisdictional dispute and secondary boycott."

The Ball amendment was defeated[32] after Senator Taft advised the Senate that he was withdrawing his substitute to the Ball amendment and would offer it as a new amendment when and if the Ball amendment were defeated.[33] Accordingly he introduced the "Taft amendment" immediately the Ball amendment was defeated.[34] In explanation of his amendment he said:[35]

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[32] 2 Leg. Hist. 1370.
[33] 2 Leg. Hist. 1365.
[34] 2 Leg. Hist. 1370.
[35] 2 Leg. Hist. 1370, 1371.

"This is similar to the Ball amendment, dealing with jurisdictional strikes and secondary boycotts. It eliminates the injunctive process, the suspension of the Norris-LaGuardia Act, which I found was creating so much difficulty and opposition to the Ball amendment. *It retains simply a right of suit for damages against any labor organization which undertakes a secondary boycott or a jurisdictional strike.*

"* * * Further, I think the threat of a suit for damages is a tremendous deterrent to the institution of secondary boycotts and jurisdictional strikes. I may say that, so far as I know, no defense of this kind of strike was made throughout the testimony. There was a suggestion that there was some kind of 'good' secondary boycott, but no one was ever able to point to it and say what it was. I think, since the sentiment of the Senate is against the injunctive process, I see no reason why suits of this sort should not be permitted to be filed. After all, it is only to restore to people, who lose something, because of boycotts and jurisdictional strikes, the money which they have lost. I do not think suits will often be brought, because I believe the possibility of a suit will be a sufficient deterrent to prevent unions undertaking this kind of racketeering activity." (Emphasis supplied.)

As so explained, and after the insertion of the words "for the purpose of this section only" after "unlawful" at the beginning of the section, the Taft substitute was enacted as a part of the Senate bill.[36] With further amendments not germane here the bill thus went to conference.[37] The conferees made no change in the Senate

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[36] 2 Leg. Hist. 1400.
[37] 2 Leg. Hist. 1522.

bill insofar as is material to the point here discussed.[38]

What the legislative history of Section 303 of the Act discloses, therefore, is a positive intent of the framers to keep the cause of action created by that Section free from any dependence on the Board or its determinations upon the filing of charges under Section 8(b)(4). As will be discussed in the subsection immediately following, it was this separation which was bitterly assailed by some of the Act's critics.

Thus there is shown a positive intention to do precisely what petitioners say was not done; and if petitioners were correct in their contentions, the statements made by both proponents and opponents concerning the policy of providing separate and independent remedies would have been utterly inexplicable. Had there been any notion that the Act provided what petitioners say it does in this respect, there would have been some clear acknowledgment by the proponents of this separate method of dealing with jurisdictional disputes that the cause of action was subsidiary to and followed the Board determination in a Section 10(k) hearing. Such statements as that by Senator Morse that the Board and the courts could be dealing simultaneously with the same subject matter[39] would not have gone unchallenged,

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[38]House Conference Report No. 510, 80th Cong., 1 Sess., p. 67, 1 Leg. Hist. 571; Taft Summary of Conference Changes, 2 Leg. Hist. 1544.

[39]"I do want to make the additional argument against the Taft substitute, that it makes it possible for *two different district courts and the N.L.R.B.* to be dealing *simultaneously* with the same subject matter. The Board would be conducting a hearing looking to a cease-and-desist order. At the same time the Board

Moreover, the President's views of the legislation, expressed in his veto message, would have been clearly incorrect had the Act provided what petitioners say it did, for there the President said:

> "Moreover, since these cases would be taken directly into the courts, they necessarily would be settled by the judiciary before the National Labor Relations Board had a chance to decide the issue. This would thwart the entire purpose of the National Labor Relations Act in establishing the Board, which purpose was to confer on the Board, rather than the courts, the power to decide complex questions of fact in a special field requiring expert knowledge." (1 Leg. Hist. 920.)

Thus if petitioners are right in their views as to what the Act provides and the Congress intended, then everyone else connected with the progress of this legislation until it became law was wrong. The bill's sponsors were wrong, the bill's opponents and their criticism of the Section in question were wrong, and the President was wrong in his reason for his veto. If the complete separation of the cause of action for the activities proscribed in Section 303(a) were not to be completely free of any connection with the results of a charge of unfair labor practice under Section 8(b)(4), then every indicia by which the meaning of statutes is ascertained has been proven wrong in this case.

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would be required, * * * to seek injunctive relief, which means that the (sic) would be two actions going on at the same time, or that there might be * * *.

"Finally, under this proposal, we have a third agency—probably a different Federal court—deciding whether a damage action lies. Such dispersion of authority, in my judgment, is very bad legislative policy." (Emphasis supplied.) 2 Leg. Hist. 1358.

The primary argument advanced in support of the Ball and Taft amendments was that a person suffering damages from a jurisdictional strike or secondary boycott, which all agreed were indefensible, should not be required to go through the National Labor Relations Board to obtain relief, but should have a right to bring his own case in court. Obviously this objective was not attained if the injured party is dependent, in the first instance, upon convincing the regional director that an unfair labor practice complaint should be filed and secondly upon what finding may be made by the Board in a 10(k) proceeding.

Second, the sponsors urged as a ground for giving the right of direct action, the need for speedy action in such cases and pointed to the fact that this could not be obtained through the Board. Certainly they accomplished nothing by the passage of the amendment if damage actions must await the outcome of proceedings before the Board.

Third, the sponsors contended that the power of an injured party to sue for damages would serve as a powerful deterrent to jurisdictional strikes. The deterrent, of course, is nonexistent if the labor organization may engage, as petitioners did here, in unlawful activities with impunity until after the Board has determined the dispute in a Section 10(k) hearing.

2. The Relation of Section 8(b)(4)(D) to Section 10(k) Does Not Support Petitioners' Contentions.

Petitioners' views of the case have other and equally serious defects. For even if the statute and Congressional

intent did not compel rejection of petitioners' contentions, an analysis of the Board's functions upon the filing of a charge under Section 8(b)(4)(D) would do so. Petitioners' belief that there is no offense under Section 8(b)(4)(D) until the disregard of a Board award makes one might have been correct if the Morse bill as written (S. 858) had been enacted. But it is completely incorrect under the statute passed by Congress.

Originally jurisdictional disputes were the particular province of Senator Morse, a majority member of the Senate Committee on Labor and Public Welfare. His bill, S. 858,[40] made such disputes unfair labor practices, but described them as disputes over whether work was performed by employees who were or were not members of a particular labor organization.[41] Since the dispute described was a contest solely between two or more unions as to which should or should not perform particular work and without reference to the employer's position, it was natural that the Senator insert in his bill a Section 10(k), which was identical[42] with the corresponding sub-

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[40] 2 Leg. Hist. 1001.

[41] Section 8(b)(2)(A) of S. 858 (Senate Committee Comparative Print, March 18, 1947, p. 9). The specific language is:

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(2) to engage, or to induce or encourage the employees of any employer to engage, in a strike or in a concerted refusal to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, in the course of their employment (A) because particular work tasks of such employer or any other employer are *performed by employees who are or are not members of a particular labor organization*, * * * " (Emphasis supplied.)

[42] Ibid., p. 16.

section as finally reported[43] (except that the descriptive subsection reference was of course changed). And with the offense so described, Senator Morse's "arbitration" method of dealing with an unresolved dispute was sensible, since the contest would be only between unions claiming certain work.

But though Section 10(k) remained as it had been in S. 858, the thing it was supposed to deal with was changed by S. 1126, as reported.[44] There the *employer's assignment* was made the crux of the contest, but as between two or more unions still.[45] In this form the description of the dispute passed the Senate in H.R. 3020 and went to conference.[46]

Then the conferees made still another change in Section 8(b)(4)(D) still without changing Section 10(k). As the bill came back from conference[47] and was enacted over a veto[48] it designated additionally employees in any trade, craft, or class to whom work might be assigned by the employer.[49]

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[43] 1 Leg. Hist. 130.

[44] 1 Leg. Hist. 113.

[45] As reported to the Senate, and then as passed, Sec. 8(b)(4)(D) read "* * * for the purpose of forcing or requiring any employer to assign to members of a particular labor organization work tasks assigned by an employer to members of some other labor organization unless * * *"

[46] 1 Leg. Hist. 291.

[47] 1 Leg. Hist. 511.

[48] 2 Leg. Hist. 1857.

[49] The pertinent language of the subsection is worth repeating here for comparative purposes with footnotes 41 and 45.

"* * * forcing or requiring any employer to assign particular work to employees in a particular labor organization *or in a particular trade, craft, or class* rather than to employees in another labor organization or in another *trade, craft, or class, unless* * * *" (Emphasis supplied.)

Thus, the demise of the Board's discretionary duty under Section 10(k) was complete with the change in theory and language of Section 8(b)(4)(D), from the "craft union" approach to the "assignment of work" principle without a corresponding change in Section 10(k). In this connection the conference committee no doubt assumed that there was no occasion to change Section 10(k) since its provisions were only procedural and the Board would be required, in any event, to look to the substantive section for the criteria by which to "hear and determine the dispute." It is notable that the conference removed from Section 10(k) the power of the Board to appoint arbitrators since these were no longer required.

At any rate, as the two sections now stand, the Board's duty is not to *decide between union claims*, which may be on interunion work-defining agreements, traditional jurisdiction, *et cetera*, for which a skilled arbitrator would be needed. Instead, the questions for decision are simply: (1) To whom had the employer assigned the work in issue? and (2) Is that assignment of work in contravention of a certification of the National Labor Relations Board under Section 9(c) of the National Labor Relations Act?

Brought down to the issue here, the statute as enacted required no different approach, no different test, no different inquiry by the Board, in assessing the 8(b)(4)(D) violation, than that of the lower court in determining the validity of respondent's cause of action under Section 303(a)(4) and (b). That respondent had assigned the work in question — the loading of its barges — to mem-

bers of its plant crew, all of whom were represented by M-271, I.W.A. (CIO), was never even questioned, either in the court below or before the Board in the "10(k)" proceeding. In the Board case it was found,[50] here it was stipulated,[51] that the respondent was not failing to conform to a certification of the National Labor Relations Board in making the aforesaid assignment, since there was no certification at all. Thus, while the Board has at least twice held[52] — though without review of the rulings' correctness by any court—that the legislative progress of Section 8(b)(4)(D) did not in effect delete Section 10(k), its decisions clearly disclose that its inquiry is purely fact-finding and ministerial in character, having nothing of the skilled interunion jurisdictional arbitration about it.

These decisions are in complete conformity with the views of the legislative sponsors of the Act, as is disclosed by the supplemental views on the Senate bill wherein Senator Taft and the other authors said[53] of jurisdictional strikes and secondary boycotts:

> "The facts in such cases are easily ascertainable by any court and do not require the expertness supposed to be one of the virtues of the administrative law procedure."

If the narrower, craft union approach to the problem had been retained intact from the Morse bill version of

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[50] See 82 N.L.R.B. 650.
[51] R. 1056.
[52] *Moore Drydock Company*, 81 N.L.R.B. 1108, and *Juneau Spruce Corp.*, 82 N.L.R.B. 650, supra.
[53] 1 Leg. Hist. 460.

Section 8(b)(4)(D) the Board would have exercised the usual powers of an arbitrator in a Section 10(k) proceeding. But the sections grew apart; the procedure stood still but the substance changed. And since the major change took place in the Committee bill, much before Section 303 was attached as a floor amendment, no condition was put in Section 303(b); it would serve no useful purpose, for the question of who is entitled to the work (absent a Board certification) is decided by the employer's assignment.[54] This was recognized by both proponents and opponents in the debates on the Conference bill. Senator Murray inserted in the record a statement reading as follows (2 Leg. Hist. 1579):

> "In addition, the changes made by the conference committee in paragraph (D) would make it possible for an employer in the allocation of work tasks to favor the members of a nonunionized craft at the expense of a craft which has been unionized. The provision as it originally appeared in the Senate bill prohibited strikes or boycotts for the purpose of requiring an employer to assign to members of a particular union work tasks assigned by the employer to members of some other union. The Senate bill thus limited this prohibition to controversies between two or more labor organizations over the right to perform particular work tasks. The provision as amended by the conference committee, however, prohibits strikes or boycotts to require an employer to assign particular work to employees in a particular union, or in a particular trade, craft, or class rather than to employees in another union or in an-

[54] Senator Morse's remarks quoted on page 48 of petitioners' brief are not to the contrary, as witness his introductory remarks concerning "work-task allocations as between unions—," thus obviously referring to that narrow class of cases where the employer stands neutral. Winslow Bros., 90 N.L.R.B. 1379.

other trade, craft, or class. The effect of this change is to proscribe the use of strikes or boycotts where an employer attempts to undermine a craft union by discriminatory assignments of work tasks to unorganized employees in another trade, craft, or class. The conference committee version thus goes far beyond the original objective of preventing jurisdictional strikes and boycotts and creates a statutory technique for undermining craft unions."

Senator Pepper expressed similar views (2 Leg. Hist. 1589).

Senator Taft replied as follows (2 Leg. Hist. 1624):

"It is contended that the addition of the condition 'another trade, craft, or class' has transformed this subsection into what started to be a prohibition of jurisdictional strikes into a prohibition preventing one union from striking even though no other union was in the picture. I have no hesitation in saying that this subsection applies not only to strikes *over the assignment of particular work* to one union rather than another, but also to the assignment of work to one union rather than another group of employees. It is submitted, however, that this is not a proper criticism of th section since *under the Labor Relations Act at the present time an employer would be violating subsection 8(3) if he discharged or discriminated against some employees merely to provide work to members of a union. Under existing law, employers have no right to accede to such union demands unless there is a closed or union-shop agreement in effect.* If an employer discriminates in the assignment of work so as to encourage a nonunion group by assigning them work which properly should be performed by union employees, it would be an unfair labor practice under the provisions of existing law and the conference bill. *In other words all that this amendment to the Senate bill does is*

to make it illegal for unions to coerce employers into doing something which an employer is already prevented from doing by the operation of section 8(3) of the present Wagner Act." (Emphasis supplied.)

C. The Decisions of the National Labor Relations Board Do Not Support Petitioners' Contentions.

Petitioners assert that the National Labor Relations Board has construed the statutes in the manner for which they contend and that it has rejected respondent's construction. Actually, insofar as is material to this case, the exact converse is the fact.

It is true that in *Juneau Spruce Corp.*, 82 N.L.R.B. 650, involving the same dispute which gave rise to this action the Board held, contrary to respondent's contention, that it was required to hold a hearing under Section 10(k) before a complaint for violation of Section 8(b)(4)(D) would issue under Section 10(b). It did not hold, as petitioners imply, in the Juneau Spruce case or any other case, that a violation of Section 8(b)(4)(D) occurs only *after* failure to comply with the Board's determination under Section 10(k).[55]

When Congress provided that the *commission* of the acts proscribed by Section 8(b)(4)(D) should constitute unfair labor practices, its purpose was to *deter* such acts,

[55] Westinghouse Electric Corporation, 94 N.L.R.B. No. 63, 28 L.R.R.M. 1058, relied on by petitioners, holds only that a strike before the determination under Section 10(k) cannot prove non-compliance with the determination. It does not hold that such a strike does not violate Section 8(b)(4)(D).

not to induce a jurisdictional strike as a means of invoking the Board's powers under Section 10(k). To that end it made a prerequisite to exercise of the Board's powers under Section 10(k) that there be a charge that a labor organization *had theretofore* engaged in an unfair labor practice of the kind prohibited by Section 8(b)(4)(D) and by Section 10(l) authorized the issuance of an injunction against continuance of such unlawful acts pending a Board determination.

Obviously, if the acts were prohibited only after the Board had determined the dispute, there would be no means of invoking the provisions of Sections 10(k) and 10(l). The fact, therefore, that Congress chose to afford a means of determining the dispute before prosecution of an unfair labor practice charge under Section 10(b) does not mean that the activities proscribed became unlawful only upon failure to comply with the Board's eventual decision in a Section 10(k) proceeding.[56]

Of course, Congress had the power, if it chose, to condone the offense if there was compliance with the Board's order. It elected to do so in the case of violations of Section 8(b)(4)(D). But it elected to enact no comparable provision by which those committing the unlawful acts could evade responsibility for damages under Section 303. If it had done so, it would have defeated its purpose to use the threat of damage actions to prevent jurisdictional strikes.

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[56] In so contending petitioners fall into the error they erroneously charge to the Court of Appeals (Petitioners' Brief, p. 53). They confuse the question of what conduct is prohibited by Section 8(b)(4)(D) with the question of procedure before the Board to compel discontinuance of the proscribed conduct.

Contrary to petitioners' contention, the National Labor Relations Board does not regard itself as having the power to arbitrate disputes over an employer's assignment of work. As indicated by the Court of Appeals (R. 1132), the Board's holding in *Winslow Bros. v. Smith Co.*, 90 N.L.R.B. 1379, relied on by petitioners, does not support their position. In that case the employer, caught between the conflicting demands of two existing bargaining units, each claiming that its contract covered the work in question, invoked the aid of the Board. At the hearing he stated unequivocally that his position was strictly neutral and thus, in effect, asked the Board to determine the assignment for him.[57]

The Board has repeatedly and consistently held that Sections 8(b)(4)(D) and 10(k) do not deprive an employer of the right to assign work to his own employees or interfere with his freedom to hire, subject only to the requirement against discrimination as contained in Section 8(a)(3) of the Act; and that where an employer's assignment is involved, and the union has no representative status, it cannot consider such matters as tradition or custom in the industry. *Moore Drydock Co.*, 81 N.L.R.B. 1108; *Juneau Spruce Corp.*, 82 N.L.R.B. 650; *Middle States Telephone Co.*, 91 N.L.R.B. No. 99; *Teleprompter Service Corp.*, 95 N.L.R.B. No. 199. The Board's conception of the limitation on its powers is exemplified by the following quotation from its decision in *Los Angeles Bldg. and Construction Trades Council*, 83 N.L.R.B. 477, 482:

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[57] 90 N.L.R.B. 1379, 1383.

"We are not by this action to be regarded as 'assigning' the work in question to the Machinists. Because an affirmative award to either labor organization would be tantamount to allowing that organization to require Westinghouse to employ only its members and therefore to violate Section 8(a)(3) of the Act, we believe we can make no such award. In reaching this conclusion we are aware that the employer in most cases will have resolved, by his own employment policy, the question as to which organization shall be awarded the work. Under the statute as now drawn, however, we see no way in which we can, by Board reliance upon such factors as tradition or custom in the industry, overrule his determination in a situation of this particular character."

Even in cases where, as here, the dispute is solely between one union and an employer, the Board has followed the same policy of regarding the employer's assignment of work as determinative of the dispute. *New London Mills*, 91 N.L.R.B. No. 86; *Direct Transit Lines, Inc.*, 92 N.L.R.B. No. 257.

It is therefore clear that in the respects material in this case, all of the Board's decisions support respondent's construction of the Act and are opposed to the views offered by petitioners.

D. The Construction of the Act by the Court of Appeals Produces Consistent, Not Unreasonable or Absurd, Results.

Petitioners' view is that there must be a Board determination under Section 10(k), and a refusal to abide by it, before an action can be brought or recovery had

under Section 303(b). In holding that this action was properly brought before those two events took place the Court of Appeals allows untenable results, they say, because the Board's determination of the work issue will be on a flexible basis of history, custom, union agreements, constitutions and bylaws, and the like, whereas a court might at the same time be determining liability on the rigid basis of the employer's assignment. These two differences in the basis of determination, they fear, may produce varying results as a result of the same activity. Also, they say, such a holding nullifies the "settlement before liability" concept which must be claimed for the Act.

Neither the unreasonable results petitioners foresee nor the reasons for them are founded on the Act or the construction of the court below. Instead they disappear because under Section 8(b)(4)(D), *as Congress passed it*, the Board in a Section 10(k) determination does not change an employer's assignment, but gives effect to it (absent a contrary Board certification or order). This is precisely the same test which is to be applied by the courts. Finding such an assignment in existence and no contravening Board order or certification, the Court and the Board will not go off in opposite directions. And should the employer stand neutral between the contestants so that the Board will "arbitrate the dispute" in the traditional sense as petitioners mean it, no action for damages lies under Section 303(b) because there has been no assignment, so here again there is no possibility

of conflict between the courts and the Board.[58]

Nor does the lower court's decision mean that Section 10(k) must be read out of the Act, as petitioners contend. As pointed out above, the Board has not only the function of finding whether the employer's assignment contravenes a Board certification (a not inconsiderable problem sometimes, as is illustrated here in 82 N.L.R.B. 650, 657) but in cases such as *Winslow Bros. & Smith Co.*, 90 N.L.R.B. 1379, where the employer stands neutral the Board has and may exercise the power of the true arbitrator of jurisdictional disputes which Senator Morse had in mind for it.

What petitioners fear as untenable results could occur only if the terms of the "Morse bill" (S. 858) had remained unimpaired in Title I of the Act. But such is not the case; when Congress changed the description of an 8(b)(4)(D) offense from a contest between unions, with the employer's assignment immaterial, to coercion to change an employer's assignment, it was careful to follow the same course in Section 303(a)(4).

But, infer petitioners, this very case illustrates the difficulties inherent in the construction of the Court of Appeals, for they hint that recovery here is in the face of an adverse determination of the Board on the original charge of April 10, 1948. This was a determination of the General Counsel, not the Board. Passing over the question whether this court has before it anything the Gen-

[58] In such a case the ruling of the Board constitutes an "order" within the meaning of Section 303(a)(4), which would protect subsequent activities consistent with the order.

eral Counsel does in processing a charge prior to bringing it before the Board, we are uncertain on what facts petitioners rely for this illustration. They stated in their petition[59] that the dismissal of the charge was because the I.W.A. observed the I.L.W.U. picket line, while in their brief now on file[60] it is said the dismissal was because there was insufficient evidence to warrant further proceedings. At all events this case affords petitioners no comfort as justification for their fears that contrary results will be reached by the *Board* and the courts if the Act is construed as the court below construed it.

What is illustrated here, as contrasted with similar situations, such as *Direct Transit Lines, Inc.*, 92 N.L.R.B. No. 257, and *New London Mills*, 91 N.L.R.B. No. 86, is that different regional directors on behalf of the General Counsel will have different views of their duty under 8(b)(4)(D) charges, and that unless the General Counsel or his agent, the regional director, agrees that such a charge shall be brought before the Board for a 10(k) hearing, it simply never gets there. Thus respondent's initial inability to obtain administrative relief due to the erroneous views of the person who was then General Counsel, illustrates the very ineffectiveness of the administrative remedy which impelled Congress to provide a direct remedy by action for damages.

There is nothing in the statute or its legislative history to indicate that Congress meant to allow unions engaging in jurisdictional strikes to be free of a Board determina-

[59]Petition, page 12.
[60]Petitioners' Brief, also page 12.

tion and also of an action for damages, if the General Counsel in his uncontrolled discretion determined for any reason satisfactory to him that the charge did not meet the statutory specifications.

Indeed, the course of events here demonstrates how incorrect are petitioners' contentions. Both the terms of the Act and its legislative history disclose that Congress believed that all peaceful means of solving such disputes should be resorted to. Therefore Congress created for jurisdictional strikes much severer penalties than for any other classes of labor activity other than boycotts, and clearly provided that if unions engaged in jurisdictional strikes pending peaceful settlement, whether by Board decision or inter- or intra-union machinery, the union involved itself in great hazard. In adding such penalties it is clear that Congress intended primarily to *prevent* jurisdictional strikes from happening at all, and secondarily to allow anyone damaged, if they did happen, to recover his losses.

It would not comport with the intent of Congress either as clearly expressed in the statute or equally clearly expressed in its legislative history were the Act construed to allow jurisdictional strikes to be conducted with impunity during the many months (illustrated here) between an initial charge and a final Board determination to file a charge under Section 10(b). Congress clearly served notice that all peaceful machinery to dispose of these claims between contending parties should be resorted to and that no work stoppage should take place during the period when a final decision was being reached

by internal union machinery or Board procedure.

So that if petitioners were correct—as they are not—that the Board acts as an arbitrator in the traditional sense and can set aside the employer's work assignment in such proceeding it would avail petitioners nothing here. The petitioners took the wrong course in attempting to obtain the work in question by the exercise of a jurisdictional strike and boycotts in support of it. They could have availed themselves of the machinery within the C.I.O., or if they claimed to represent respondent's dock employees they could have filed representation proceedings before the Board. They did neither, but used the prohibited strikes and boycotts to enforce their claims. In doing so they ran afoul of the clear intent of Congress to penalize such a course from its inception by allowing the injured party his damages.

If petitioners are right that the court below erred in this construction of the Act, then every evidence of Congressional intent to make jurisdictional strikes and boycotts costly if that method of claiming work assignments was resorted to, must be disregarded and, so far as jurisdictional strikes and boycotts are concerned, the law of the jungle once again prevails.

II. THE COURT OF APPEALS DID NOT ERR IN SUSTAINING THE RULINGS OF THE TRIAL COURT ON MATTERS OF JURISDICTION, SERVICE OF PROCESS AND AGENCY

Both the trial court and the Court of Appeals, in carefully considered opinions, ruled that the trial court was

a "district court of the United States" within the meaning of Section 303(b) of the Labor-Management Relations Act, which reads as follows:

> "Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

Petitioners assign this ruling as error. Petitioners concede that the trial court might have acquired jurisdiction as "any other court having jurisdiction of the parties," but they assert that as a result of having misconceived its status to be that of a "district court of the United States," it committed prejudicial error in various rulings during the course of the litigation.

We shall first discuss the question of the status of the Alaska Court under the particular statute involved and shall later point out that in any event its rulings were correct, whatever its status.

A. The Alaska Court Is a "District Court of the United States" Within the Meaning of the Act.

1. The Designations of Federal Courts Throughout the Act Were Not Used as Words of Art.

Basically, petitioners' contention is that the term "district court of the United States" as used in Section 303(b) was meant to describe only constitutional courts created under Article III of the Constitution, and to

exclude legislative courts established under Article IV. Concededly the Alaska Court falls within the latter classification and is not a constitutional court. It may also be conceded that the term "district court of the United States," *when used without an addition expressing a wider connotation,* means a constitutional court. *Mookini v. United States,* 303 U.S. 201, 58 S. Ct. 543, 82 L. Ed. 748.

It does not follow from this, however, that the term is always used in the technical sense. The inquiry must always be which meaning fits the evident purpose of the Act. *People of Puerto Rico v. Shell Co.*, 302 U.S. 253, 58 S.Ct. 167; *Atlantic Cleaners & Dyers v. United States,* 286 U.S. 427, 52 S.Ct. 607.

Reading the act as a whole compels the conclusion that while the Act certainly is no model of draftsmanship, the varying references to the Federal courts were used not in any technical sense but as descriptive of any courts created by Congress. Including the section here in question, the phrase *"district court of the United States"* is used six times in the Act. (Sections 10(b), 208(a), 301(a), 301(b) and 301(c)).

" . . . *district court of the United States (including the District Court of the United States for the District of Columbia)"* is the court designated three times. (Sections 10(e), 10(j) and 10(l)).

An equal number of times Congress employed the words "courts of the United States." (Sections 11(4), 301(b), and301(d)).

Once (Section 11(2)) Congress used an all-inclusive description: *"district court of the United States or the United States courts of any Territory or possession, or the District Court of the United States for the District of Columbia."*

Lastly, in Section 302(e) Congress used all the above descriptions except one: *"district courts of the United States and the United States courts of the Territories and possessions."*

The very lack of uniformity in the terminology used to describe the courts indicates unmistakably that the terms were not used in any technical sense. For example, the use in Sections 10(e), 10(j) and 10(l) of the words "(including the District Court of the United States for the District of Columbia)" was unnecessary since that court had been held to be a constitutional or Article III court. *O'Donoghue v. United States*, 289 U.S. 516, 53 S.Ct. 740. If these words were added as a matter of precaution because of doubt as to the status of the District of Columbia Court, then the words should also have been added to Section 302(e), which included the courts of the territories and possessions but said nothing about the District of Columbia.

Moreover, if there had been any doubt about the status of the District of Columbia Court, surely it would have been specifically mentioned in Section 208(a) which conferred power on the district courts of the United States to enjoin strikes and lockouts imperiling the national welfare. The "national emergency strike" issue was much in the minds of the lawmakers at the time this

Act was in the process of passage, for this Court had, on March 6, 1947, rendered its decision in *United States v. United Mine Workers of America*, 330 U.S. 258, 67 S.Ct. 679.

Another example of inartful draftsmanship is found in Section 302(e), wherein district courts of the United States and United States Courts of the Territories and possessions (but not District of Columbia Courts) are given power to enjoin certain payments to employee representatives. In so providing Congress apparently overlooked the fact that under the definition of "commerce" and "industry affecting commerce" in Sections 2(6) and 501(3), the Act had no application to possessions.

Consideration of the absurd and unreasonable results which would follow adoption of petitioners' contention demonstrates conclusively that the various descriptions of courts found in the Act were not used in the technical sense. Thus, Section 301(b) provides that a money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets. The legislative history establishes that this provision was inserted for the purpose of avoiding another *Danbury Hatters* case. We doubt whether even petitioners would argue that Congress intended by this restrictive description to subject the personal assets of union members to payment of a judgment in a state or territorial court. Of course it had no such intention.

Again, there is no question but that the reach of the entire Act is not only to the continental United States, but as well to the territories and District of Columbia. There is nothing anywhere in the Act suggesting that its rights and duties do not apply to employees, labor organizations, and employers in commerce, or affecting commerce, wherever located within those limits. In this respect the entire Act is no broader or narrower than, but is identical with, the National Labor Relations Act or "Wagner Act" as constituted prior to June 23, 1947. And the application of that Act to the territories, including the Territory of Alaska, was never successfully questioned. *N.L.R.B. v. Gonzalez Padin Co.*, 161 F. (2) 353; *Alaska Salmon Industry, Inc.*, 33 N.L.R.B. 727; *Alaska Juneau Gold Mining Co.*, 2 N.L.R.B. 125. Cf. Footnote 15, *Vermilya-Brown Co. v. Connell*, 335 U.S. 377, 69 S.Ct. 140, 93 L.Ed. 76.

Yet, if petitioners' contention is correct, machinery was provided to restrain unfair labor practices in the states but not in the territories. This result would follow from the fact that Sections 10(j) and 10(l) confer jurisdiction to hear applications for such injunctions only upon district courts of the United States, including the District of Columbia Court.

As pointed out by the Court of Appeals, it is certain that Congress adopted the Act with full knowledge that the only court in the entire Territory of Alaska which could possibly entertain and adjudicate a cause of action arising under the Act was the trial court in this case. It must have known also that such was the only court to

which applications could be made for injunctions against unfair labor practices. Certainly it did not intend to nullify its action in making the substantive provisions of the statute applicable to the territories by withholding from the territorial courts the procedu al remedies.

2. The Meaning of the Phrase "District Court of the United States" Is to Be Determined by the Context of the Act.

Petitioners do not question the absurd results which their construction of the statute would produce. Instead they insist that the term "district court of the United States" has a well defined meaning—that of a constitutional court—and that it is not the function of the courts to correct supposed errors made by the legislature.

In thus denying the right and duty of the courts to inquire into legislative intent, petitioners must necessarily contend that there is no possible uncertainty concerning what courts Congress intended to describe in Section 303(b), for in an earlier portion of their brief petitioners have insisted that for little other reason than identity of language in Sections 303(a)(4) and 8(b)(4)(D) the court must read into the former section the requirement that actions for damages must await the outcome of a board proceeding under Section 10(k) (Petitioners' Brief, pp. 43, 44). In fact, in that connection, petitioners contend that even if the language of the statute were considered unambiguous, it was the duty of the court to "look beyond the words to the purpose of the Act," since to do otherwise would frustrate the Congressional design (Petitioners' Brief, p. 58).

We have already pointed out that adoption of petitioners' contention concerning the meaning of "district court of the United States" would frustrate the obvious statutory purpose and would lead to absurd and unreasonable results, which is of itself a sufficient reason to inquire into the meaning intended. As stated by this court in *United States v. American Trucking Assns.*, 310 U.S. 534, 543, 60 S.Ct. 1059:

> "* * * Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words. When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'"

The term "district court of the United States" is not, however, a plain and unambiguous expression. It is true that in a technical sense the terms "district court of the United States" and "court of the United States" mean courts created under Article III of the Constitution; but it is likewise true that the terms have been used both by Congress and by the courts in a much broader sense. Thus, in *In Re Cooper*, 143 U.S. 472, 494, 512, 12 S.Ct. 453, this court, while pointing out that the Alaska court was not one of the courts mentioned in Article III of the Constitution, nevertheless referred to it as follows:

> "But the District Court of Alaska is not alone a *District Court of the United States*, and a District Court exercising Circuit Court powers; it is also a

court of general law and equity jurisdiction." (Emphasis supplied.)

In their brief petitioners lay much stress upon the new Judicial Code (Act of June 25, 1948, Title 28 U.S.C.) and upon the fact that in this code Alaska was not made a judicial district. Presumably the judicial code was drafted far more carefully with respect to the title of courts than a general statute which described courts only in connection with enforcement of its provisions. Nevertheless, we find even in this code not only inexact language in court designations but also evidence that Congress did not regard the term "courts of the United States" or the term "district courts of the United States" as including only courts created under Article III of the Constitution.

As pointed out by petitioners, the new judicial code did not create a judicial district for Alaska. At various places in the Code it referred to the Alaska Court as the "District Court for the Territory of Alaska." See Sections 373, 460, 753, 2191 and 1294. Yet by Section 9 of the same Act of June 25, 1948, it amended Section 101 of Title 48 U.S.C. to change the title of the Alaska court to "district court for the District of Alaska."[61]

In Section 451 of the new judicial code, Congress defined the terms "district court" and "district court of the United States" to mean the courts constituted by Chapter 5 of Title 28, U.S.C. Referring to Chapter 5, we find that while the Alaska court is not mentioned, Con-

[61] 1950 Revised Edition of Title 28, p. 320.

gress has by definition now included the territorial courts of Hawaii and Puerto Rico in the category of "district courts of the United States." Moreover, in the same section Congress defines the term "court of the United States" to include the courts of Hawaii and Puerto Rico. Thus no longer can it be said that either term now includes only courts created under Article III of the Constitution.

At page 67 of petitioners' brief it is argued that Congress meant, by enactment of the new judicial code, to define retroactively what was meant by terms which had been used in legislation and court decisions throughout the years. If such was the intention, it is strange that Congress waited so long before taking issue with court decisions holding that the term "courts of the United States" did not include legislative courts such as those in Hawaii and Puerto Rico. Actually, of course, Congress had no such intention, as shown by the fact that its definitions in Section 451 of Title 28 were carefully limited to the terms "as used in this title."

In contrast with the definitions in the new judicial code, Sections 11(2) and 302(e) of the Labor-Management Relations Act, [62] enacted one year before the new

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[62] The pertinent portions of Sections 11(2) and 302(e) read as follows:

"(2) In case of contumacy or refusal to obey a subpena issued to any person, any district court of the United States or the United States courts of any territory or possession, or the District Court of the United States for the District of Columbia, . . ."

"(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jur-

judicial code, authorize certain proceedings in "United States courts of the Territories and possessions," thus indicating unmistakably that territorial courts were considered to be "courts of the United States" for the purposes of that Act. Since the Alaska court had always been designated by Section 101, Title 48 U.S.C. as a "district court," it is understandable that Congress should have considered the terms "district courts of the United States" and "United States courts of the Territories" as synonomous.

From what has been said it is clear that the terms "courts of the United States" and "district courts of the United States" are not so precise and unambiguous in their meanings as to indicate that Congress legislated here with such precision as petitioners ascribe to it. In situations of the character here presented, this court has not hesitated to look beyond the words used by Congress in the field of description of Federal courts to determine what was intended.

Thus, in *Federal Trade Commission v. Klesner*, 274 U.S. 145, 47 S.Ct. 557, this Court held that the Court of Appeals of the District of Columbia was included within a statute granting jurisdiction to any "Circuit Court of Appeals of the United States" to enforce cease and desist orders of the Federal Trade Commission. The court recognized that the District of Columbia court was

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isdiction, for cause shown, and subject to the provisions of section 17 (relating to notice to opposite party) of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U.S.C., title 28, sec. 381), to restrain violations of this section, . . ."

not technically a "Circuit Court of Appeals of the United States" but felt that the term so used did not indicate Congressional intent to leave the Federal Trade Commission without a forum in the District of Columbia in which to enforce its orders. It defined the problem thus:

> "The question, therefore, which we have to answer, is whether, when Congress gave the Commission power to make orders in the District of Columbia, with the aid of the Supreme Court of the District, in compelling the production of evidence by contempt or mandamus, it intended to leave the orders thus made, if defied, without any review or sanction by a reviewing court, though such review and sanction are expressly provided everywhere throughout the United States except in the District. We think this most unlikely, and therefore it is our duty, if possible in reason, to find in the Trade Commission Act ground for inference that Congress intended to refer to and treat the Court of Appeals of the District as one of the Circuit Courts of Appeals referred to in the Act to review and enforce such orders."

The court then referred at length to *Steamer Coquitlam v. United States*, 163 U.S. 346, 16 S.Ct. 1117, 41 L.Ed. 184, and quoted from the opinion in that case the following language:

> "'Looking at the whole scope of the Act of 1891, we do not doubt that Congress contemplated that the final orders and decrees of the courts of last resort in the organized territories of the United States—*by whatever name those courts were designated in legislative enactments*—should be reviewed by the proper Circuit Court of Appeals, leaving to this court the assignment of the respective territories among the existing circuits.'" (Italics supplied.)

Noting that the District of Columbia appellate court exercised "* * * exactly the same function as the Circuit Court of Appeals does * * *" with respect to the District trial court, the court continued:

> "We must conclude that Congress, in making its provision for the use of the Circuit Courts of Appeal in reviewing the Commission's orders, intended to include within that description the Court of Appeals of the District of Columbia as the appellate tribunal to be charged with the same duty in the District."

Then the Court concluded with this significant statement:

> "*The law was to be enforced, and presumably with the same effectiveness, in the District of Columbia as elsewhere in the United States.*" (Italics supplied.)

The principles of the *Klesner* decision are squarely in point. If the courts of the territories were intended to have no power to aid the Board by the issuance of injunctions against the Commission of unfair labor practices, there was little use of making the Act applicable to the territories.

The instant case is even stronger than the *Klesner* case, for here, unlike the Act there, the many different designations of the Federal trial courts, instead of one, would not allow a statement such as was made by Mr. Justice McReynolds in his lone dissent that the designation of the court was "deliberately chosen."

The Court of Appeals in its decision also relied upon and quoted extensively from the decisions of this court

in *United States v. American Trucking Assns.*, 310 U.S. 534, 543-544, 60 S.Ct. 1059; and *Talbott v. Silver Bow County*, 139 U.S. 438, 441, 442, 443, 11 S.Ct. 594 (R. 1124-1127). It also called attention to the reasoning in such cases as *Andres v. United States*, 333 U.S. 740, 745, 68 S.Ct. 880; *Stainback, Governor, et al v. Mo Hock Ke Lok Po, etc.*, 336 U.S. 368, 378, 379, 69 S.Ct. 606; and *The Maret*, 145 F. (2) 431, 436, Note 28 (R. 1127). In the last mentioned case the District Court of the Virgin Islands was held to be a "United States district court" within the meaning of the Maritime Requisitioning Act (Act of June 6, 1941, 55 Stat. 242, as amended by the Act of March 24, 1943, 54 Stat. 45).

In *Stainback, Governor, et al v. Mo Hock Ke Lok Po*, supra, this court held inapplicable to the territorial court in Hawaii the provisions of Section 266 of the Judicial Code, 28 U.S.C.A. 380, providing for three judge courts to hear cases attacking the validity of statutes of the states. It relied in part, however, upon the complete absence from the statute of any mention of the territories and pointed out that on other occasions, where frustration of Congressional purpose would otherwise result, it had construed the word "state" to include territory.

Being unable to answer the logical application of these decisions, petitioners have contented themselves with charging the Court of Appeals with inconsistency in failing to apply the same rules of statutory construction to determine the validity of petitioners' first specification of error (Petitioners' Brief p. 77). As we have indicated, however, there is no inconsistency because ap-

plication of the same rules indicates that there is no merit to either specification of error.

None of the cases relied upon by petitioners are in point here. *Mookini v. United States,* 303 U.S. 201, 58 S.Ct. 543, pointed out that the term "District Courts of the United States," as used in the Criminal Appeals Rules, *without an addition expressing a wider connotation,* historically was used to describe constitutional courts created under Article III of the Constitution. We do not question this principle nor do we contend that the Alaska court was a constitutional court. We have pointed, however, to many additional expressions in the Labor-Management Relations Act which indicate that the language there used was intended to have a wider connotation.

The statute under which this court promulgated its Criminal Appeals Rules specified the "district courts of the United States, including the district courts of Alaska, Hawaii, * * *" thus indicating that Congress considered it suitable to *include* the territorial courts within the designation of "district courts of the United States." However, when this court promulgated the rules it carved out only "district courts of the United States" and omitted mention of the other courts, which it was empowered to do. In holding that the rules were inapplicable to a territorial court this court construed its own intention, not that of Congress.

I.L.W.U. v. Wirtz (9 Cir.), 170 F. (2) 183, holds merely that as used in the context there considered the term "district courts of the United States" must be given the

restrictive meaning. If it were true, as petitioners contend, that the term can have no other meaning, there would have been no occasion for the court to consider the legislative history which impelled its belief that the legislation in question was not intended by Congress to extend to territorial courts.

The distinction made between Constitutional and Legislative courts is vital to certain types of inquiries, such as that involved in *O'Donoghue v. United States*, 289 U.S. 516, 53 S.Ct. 740, 77 L.Ed. 1356. There the issue was whether a judge of the Supreme Court of the District of Columbia was one of the judges "whose compensation may not, under the Constitution, be diminished during their continuance in office * * *" within the meaning of the Legislative Appropriation Act of 1932 (Ch. 314, 47 Stat. 382, 401). Congress had reduced the salaries of all judges which it constitutionally could, and left it to the Supreme Court to decide in individual cases whether a given court was a Constitutional or Legislative court. In such case the Constitutional distinction between Article III, or Constitutional courts, and Article IV, or Legislative courts, was the entire burden of the inquiry. There are many other such cases, where the distinction is vital to and the only point of the inquiry before the court because it inheres in the subject matter or point being considered. Cf. *McAllister v. U.S.*, 141 U.S. 174, 11 S.Ct. 949, 35 L.Ed. 693, wherein the term "Courts of the United States" was obviously used by Congress to except from operation of the statute the judges of courts which Congress had no power under the

Constitution to remove from office.

Other types of cases involve statutes where it is obvious from the words used, the schemes of the Acts, and their legislative history, that the foregoing distinctions are not material and that the terms used were not words of art but only of descriptions of a class.

The case at bar falls within the latter category. Nowhere in cases of this character have the courts considered the legislative description of Federal courts in a vacuum, as petitioners insist should be done here. Instead they have considered the designation of courts in the light of the context and legislative history of the Act. Thus, Congress should be said to have known, in using the words in question, not that they have only a definite and restricted meaning, but that they may refer to either constitutional or legislative courts, as the context and legislative history may indicate.

We have pointed out above the lack of uniformity in language used in the Labor-Management Relations Act to describe the Federal courts. In addition it should be mentioned that nowhere in the legislative history is there any indication that the various terms used in description of courts were intended to have any controlling significance. On the contrary, as pointed out by the Court of Appeals (R. 1118, 1119), the legislative history contains loose references to "federal courts," which is strongly indicative of an intent to employ the terms in a comprehensive rather than a restricted sense. (2 Leg. Hist. 1357, 1371-73).

We have also commented upon the absurd and unreasonable results which would follow if petitioners' contention were adopted. As stated by the Court of Appeals, it would mean that, for most purposes, the law was a dead letter in Alaska (R. 1124). For these reasons it is submitted that the descriptions of courts used in the Act should not be given a restricted interpretation but should be held to include the territorial courts. As so construed, the trial court was a "district court of the United States" within the meaning of Section 303(b) of the Act.

B. The Rulings of the Trial Court of Which Petitioners Complain Were Correct Irrespective of Its Status as a "District Court of the United States."

1. The Limitations and Provisions of Section 301 of the Act Apply to Actions in Any Court.

In the preceding section of this brief we have urged that the various descriptions of federal courts contained in the act should not be given a restricted interpretation but should be held to include the territorial courts. If it is so held, there will be no occasion to consider further petitioners' second specification of error, since it is predicated solely upon the assumption that the trial court made certain rulings which were correct *only* if its status was that of a district court of the United States within the meaning of Section 303(b) of the Act. In this particular case, however, the rulings complained of were correct regardless of the status of the court.

Petitioners concede that whatever else the court may have been, it was a court having jurisdiction of the parties within the meaning of Section 303(b), "assuming it did have such jurisdiction." (Petitioners' brief, p. 75). It is said, however, that as a result of having misconceived its status the trial court erred in its rulings in three respects: (1) as to jurisdiction; (2) as to service of process; and (3) as to the law of agency. The basis for petitioners' contention is found in Section 303(b) of the Act, which provides as follows:

> "Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

Petitioners read this statute literally as making the "limitations and provisions of Section 301" applicable only to suits in United States district courts and as not applicable to suits in "any other court having jurisdiction of the parties." As so construed, and assuming that the trial court was not a district court of the United States, petitioners would render all of the provisions of Section 301 inapplicable to suits in the Alaska court as well as state courts.[63]

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[63] Sec. 301 (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard

It will at once be observed that there is considerable reason to doubt the soundness of petitioners' premise. A large part of the provisions of Section 301 deal with matters of substantive law. We question, for example, whether Congress intended to permit the collection of judgments obtained in a state or territorial court by seizure of the assets of individual members. Bearing in mind the determination of Congress to avoid a repetition of the *Danbury Hatters* case (2 Leg. Hist. 1497), it would hardly have conferred a federal right to bring actions for damages against labor unions without restricting the effect of the judgment, regardless of the court where it

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to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

was obtained. Yet this must be the result if Section 303(b) is construed as petitioners desire.

This result can be avoided only by inquiring into and giving effect to the obvious intention of Congress that the limitations and provisions of Section 301 should apply to *all* actions in every court under Section 303(b). Such a construction would recognize that as a result of inartful draftsmanship the phrase "subject to the limitations and provisions of Section 301 hereof" was erroneously inserted *between* the designations of courts in which the action might be brought instead of *following* such designations.

If the court should so rule, it will likewise be unnecessary to consider further petitioners' second specification of error, since it is predicated entirely upon the assumption that Section 301 of the Act was inapplicable to suits in the Alaska court.

2. The Rulings of the Trial Court Were Correct in Any Event.

As to Jurisdiction.

The reasons advanced by petitioners in support of their contention that the trial court had no jurisdiction are somewhat obscure. Apparently they attach no importance whatever to Section 101 of Title 48 U.S.C., which reads in pertinent part as follows:

> "There is established a district court for the Territory of Alaska, with the jurisdiction of district courts of the United States and with general jurisdiction in civil, criminal, equity, and admiralty causes; * * *"

In *United States v. Burroughs*, 289 U.S. 159, 53 S.Ct. 574, it was held that while a similar statute does not have the effect of transforming a Legislative court into a Constitutional court, it will authorize such a court to try statutory actions cognizable in district courts "as if the tribunal were in fact a district court of the United States."

Similarly, petitioners make no mention of Section 23 of Title 48, U.S.C. relative to Alaska, which provides in pertinent part as follows:

> "The Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States."

In *Page v. Burnstine*, 102 U.S. 664, this Court regarded a similar statute relative to the District of Columbia as impelling the conclusion that Section 858 of the Revised Statutes relating to the competency of witnesses to testify in courts of the United States was applicable to the District of Columbia courts, although at that time they were regarded as Legislative rather than Constitutional courts.

It is evident that the effect of the two statutes quoted above was to confer upon the trial court precisely the same jurisdiction as a district court of the United States in the technical sense. For *jurisdictional* purposes therefore, it is unimportant whether it was a district court of the United States within the meaning of the Act.

Aside from these considerations, however, the court clearly had jurisdiction. It was expressly granted jurisdiction over the subject matter by Section 303(b) of the

Act and its jurisdiction over the parties was dependent only upon the requirements of due process. Speaking of the elements necessary to confer jurisdiction upon a court over a nonresident defendant, this court has said that the issue turns on whether the defendant has, with reference to the forum:

> "* * * certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. State of Washington*, 326 U.S. 310, 316, 66 S.Ct. 154.

Congress specified in Section 301(c) of the Act that these minimum contacts in the district where suit was brought should be (1) maintenance of its principal office in the district, or (2) having in the district duly authorized officers or agents engaged in representing or acting for employee members. Obviously, while Congress could contract the requirements to confer jurisdiction, it could not expand them beyond the limits of due process. It is therefore clear that the trial court's jurisdiction over the persons of defendants was at least as broad as that conferred upon district courts of the United States. Petitioners do not deny that each of them maintained within the Alaska district duly authorized officers or agents engaged in representing or acting for employee members.

Petitioners also contend that the trial court lacked jurisdiction to entertain suits against unions as entities. They concede that since the decision of this Court in *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344, 42 S.Ct. 570, the right has existed to prosecute such actions to enforce a federal right but assert that the rule

of that case is limited to actions in district courts of the United States. In this assertion petitioners are in error. Answering a similar contention, the court said in *Williams v. United Mine Workers*, 294 Ky. 520, 172 S.W. (2) 202, 149 A.L.R. 505:

> "Regardless of the rule in this state as to suability of a voluntary association in its common name, the right sought to be enforced in the present case stems from a Federal law and that law controls. The rights and remedies in the courts with concurrent jurisdiction are necessarily the same."

Moreover, the right to sue labor unions as entities is conferred by Section 301(b) of the Act here involved in "courts of the United States" (not district courts of the United States). Sections 11(2) and 302(e) of the Act make it plain that territorial courts were considered by Congress to be "courts of the United States," whatever else their status may be.

As to Service.

Petitioners contend that error was committed in holding that service of process was properly effected upon petitioner International by serving its International Representative for Alaska. However, Section 301(d) of the Act provides that service of the process of "any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization." For the reasons previously discussed, this provision was applicable to the Alaska court.

Petitioners contend, on authority of *Daily Review*

Corp. v. International Typographical Union (E.D. N.Y.), 9 F.R.D. 295, 26 LRRM 2503, that even if Section 301(d) were applicable, the service of process upon Albright, the Alaskan representative of petitioner International, was insufficient to confer jurisdiction. In the case cited, however, it appeared that the defendants had neither an officer nor a representative in the district where suit was brought and service apparently was made upon their president while he was on a temporary sojourn in the state.

In the case at bar, the agent of petitioner International was stationed permanently in Alaska, where his duties were to "service and advise all of the locals and to make regular reports to the International (R. 954, 956, 957). Furthermore, there was undisputed evidence at the trial that Albright, acting as agent of the International, took an active part in the unlawful activities for which suit was brought.

In any event the record in this case leaves no room to doubt that Albright had such a relation to the International that

> "it could reasonably be expected that if served with process he would give notice of the suit to the Association." *Operative Plasterers etc. Assn. v. Case*, 93 F.(2) 56, 67.

The record likewise shows that petitioner International did in fact receive prompt advice of the service upon its representative, for both petitioners promptly filed on November 20, 1948, a general demurrer raising the questions of jurisdiction over the person as well as

the subject of the action (R. 15). This demurrer was argued and taken under advisement on December 31, 1948. On January 3, 1949, petitioners filed a special appearance and motion to quash service of summons, together with a motion for leave to withdraw their general demurrer (R. 7-14, 15-18). On March 11, 1949, the trial court overruled the demurrer and denied all of the motions (R. 14).

It was, of course, within the discretion of the trial court whether to relieve the petitioners of the effect of a general appearance. *Brookings State Bank v. Federal Reserve Bank of San Francisco* (D. Ore.), 291 Fed. 659. The court having refused to grant such motion, it followed that the filing of a general appearance would have waived any deficiencies in the service of process even if they had existed. *United States v. Yakutat & S. Ry. Co.*, 2 Alaska Rep. 628; *Dickey v. Turner* (6 Cir.), 49 F. (2d) 998, 1001; *Chesapeake & Ohio Ry. Co. v. Coffey* (4 Cir.), 37 F.(2) 320.

As to Agency.

Petitioners next contend that as a result of the trial court's misconception of its status it erroneously instructed the jury concerning the provisions of Section 301(e), which reads as follows:

> "For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

It should be noted that the language in Section 301(e) above quoted is identical with that of Section 2(13) except that the latter section is made general in terms by omission of the opening words "For the purposes of this section" found in Section 301(e). This emphasizes the fact, borne out by the legislative history, that the two sections mentioned were designed to declare principles of substantive law not limited to any court. Thus, Section 301(e) merely explains the first sentence of Section 301(b), which sets forth the general principle that labor organizations and employers shall be bound by the acts of their agents. It is therefore obvious that the principle of substantive law so announced was applicable whatever the status of the trial court.

However, Section 301(e) did no more than to restore the common law rule. This was made clear by a memorandum prepared by the Chairman of the Senate Committee on Labor and Public Welfare, and Chairman of the Senate Conference Committee, which reads as follows:

> "Section 2(2), 2(13), and Section 301(e): The conference agreement in defining the term employer struck out the vague phrase in the Wagner Act 'anyone acting in the interest of an employer' and inserted in lieu thereof the word 'agent.' The term agent is defined in Section 2(13) and Section 301(e), since it is used throughout the unfair labor practice sections of Title I and in Sections 301 and 303 of Title III. In defining the term the conference amendment reads 'The question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.' *This restores the law of agency as it has been developed at common law.*

"These amendments are criticized in one breath as imposing too harsh a liability upon unions for the acts of their officers or representatives and as too mild with respect to the liability of employers for the acts of their managerial and supervisory personnel. Of course, the definition applies equally in the responsibility imputed to both employers and labor organizations for the acts of their officers or representatives in the scope of their employment.

"It is true that this definition was written to avoid the construction which the Supreme Court in the recent case of United States against United Brotherhood of Carpenters placed upon Section 6 of the Norris-LaGuardia Act which exempts organizations from liability for illegal acts committed in labor disputes unless proof of actual instigation, participation, or ratification can be shown. The construction the Supreme Court placed on this special exemption was so broad that Mr. Justice Frankfurter, speaking for the dissenting minority, pointed out that all unions need do in the future to escape liability for the illegal actions of their officers is simply to pass a standing resolution disclaiming such responsibility. *The conferees agreed that the ordinary law of agency should apply to employer and union representatives.* Consequently, when the supervisor acting in his capacity as such engages in intimidating conduct or illegal action with respect to employees or labor organizers, his conduct can be imputed to his employer regardless whether or not the company official approved or were even aware of his actions. Similarly union business agents or stewards, acting in their capacity of union officers, may make their union guilty of an unfair-labor practice when they engage in conduct made an unfair-labor practice in the bill, even though no formal action has been taken by the union to authorize or approve such conduct." (Emphasis supplied.) (2 Leg. Hist. 1622.)

The common law rule of agency in a tort action does not, as implied by petitioners, require prior authorization or subsequent ratification. The rule has been stated by this court as follows:

> "It is now well established that, in actions for tort, the corporation may be held responsible for damages for the acts of its agents within the scope of his employment. (Citing cases.)
>
> "And this is the rule when the act is done by the agent in the course of his employment, although done wantonly or recklessly or against the express orders of the principal. In such cases the liability is not imputed because the principal actually participates in the malice or fraud, but because the act is done for the benefit of the principal, while the agent is acting within the scope of his employment in the business of the principal, and justice requires that the latter shall be held responsible for damages to the individual who has suffered by such conduct." *New York Central & H.R. Railroad Co. v. United States*, 212 U.S. 493, 29 S.Ct. 304, 306.

Thus the real basis of petitioners' complaint is not that they were deprived of the benefit of the common law rules of agency in tort actions (which the court did apply) but that they did not receive the benefit of agency rules applicable to actions on contract.

For the foregoing reasons petitioners were not prejudiced in any way by the trial court's rulings. Whether the Alaska court was a "district court of the United States" or "any other court having jurisdiction of the parties," its rulings were necessarily the same.

III. THE TRIAL COURT PROPERLY REFUSED TO INSTRUCT THAT RESPONDENT WAS NOT ENTITLED TO RECOVER ANY DAMAGES RESULTING FROM THE CLAIMED REFUSAL TO BARGAIN WITH I.W.A.

Petitioners urge that the trial court erred by refusing to give to the jury petitioners' proposed instructions numbered 1, 2, 12 and 13.[64]

[64] R. 34-36, 43-44. These instructions are printed on pages i to iv in the Appendix to Petitioners' Brief.

A. Requested Instructions 1, 12 and 13 Were Properly Refused.

Requested instructions Nos. 1 (R. 34-35) and 12 (R. 43-44) disclose on their face that they were taken from the statements of policy contained in Sections 1 and 201 of the Act. As such they are no more than statements of abstract principles, unrelated to the complaint or the evidence in this case. Thus they were properly refused. *Irvine v. Irvine*, 76 U.S. 617, 19 L. Ed. 800; *Howard v. Capital Transit Co.*, 163 F. (2) 910, 912 (App. D.C.).

Petitioners' requested instruction No. 13 consisted of a quotation of Section 204 of Title II of the Act. Section 204 deals entirely with the duty of employers and employees and their representatives to bargain with each other and to use the services of the Federal Mediation and Conciliation Service. This being so, the requested instruction had no application whatever to the issues raised by the pleadings in this case. The controversy set

forth in the pleadings was one between respondent and petitioners (R. 2, 23, 29, 32). Petitioners admittedly did not represent any employee of respondent (R. 192, 298).

Petitioners made no attempt to connect the abstract statements contained in requested instructions 1, 12 and 13 with any of the factual issues in dispute in any other proposed instructions (R. 34-45). When taking their exceptions to the failure of the court to grant the requested instructions, they did not point out for the benefit of the court how the requested instructions should be related to any of the issues (R. 1046, 1049-1050). Even now it is not apparent how petitioners intended that these instructions should be related to any issue in this case. Had the court given these instructions the jury could only have been confused. Thus there was no error in refusing to grant petitioners' request.

B. Requested Instruction 2 Was Properly Refused.

Petitioners' proposed instruction 2, the only one in issue dealing with what the jury should do in this case, was as follows:

> "The Taft-Hartley Act was enacted in the interest of public policy to avoid economic strife and warfare, and so if you find from a consideration of all the evidence in this case that the action of the Juneau Spruce Corporation in refusing to accede to the demand of I.W.A. M-271 to turn over the loading barges to Local 16 was unreasonable or unjustifiable, in view of that provision, plaintiff is not entitled to recover any damage it may have sustained on account of such unreasonable or unjustifiable refusal to bargain.

"This policy is applicable only to the territorial limits of the United States and not to Canada." (R. 35-36.)

Petitioners' contention that the proposed instruction should have been given rests almost entirely upon the argument that respondent was guilty of "wrongdoing" in failing to live up to a supposed "commitment" of respondent's manager to the I.L.W.U. representative. But proposed instruction 2 dealt entirely with the consequences of any refusal on the part of respondent to bargain with the I.W.A. Clearly no issue turning on respondent's dealings with petitioners would have been presented to the jury had the instruction been granted.

While the circumstances surrounding the so-called "commitment" between petitioners and respondent do not bear upon the propriety of the court's refusal to give requested instruction 2, it is necessary to correct certain erroneous inferences which might be drawn from petitioners' discussion of the "commitment."

The only "commitment" of respondent consisted of a statement by respondent's manager to the I.L.W.U. representative in August, 1947, that if petitioners and the I.W.A. officials could "work it out so we could sign a contract also with the longshoremen and the I.W.A. * * * it would be agreeable." (R. 182.) At no time did respondent agree to recognize petitioners as the representative of any of their employees unless it could do so lawfully.

In August, 1947, respondent had not yet entered into a formal contract with the I.W.A. concerning the representation and working arrangements for respondent's

employees (R. 125-130). While respondent had recognized the I.W.A. as the collective bargaining agent for its employees as soon as it presented evidence that it represented a majority of the employees (R. 129, 130, 144) an agreement was not finally reached with the I.W.A. whereby respondent agreed to recognize the I.W.A. for any specified period of time or as a representative of the employees loading barges until November 3, 1947 (R. 130, 302, Plaintiffs' Ex. 2).

So far as respondent knew, no individual longshoreman had ever sought employment or was on the company payroll (R. 123-124). In the November 3 contract, respondent recognized the I.W.A. as the sole and exclusive bargaining agent for all of its employees at Juneau, with exceptions not here relevant (R. 132, Plaintiffs' Ex. 2). Both parties to the agreement construed the agreement to cover employees performing the work of loading barges (R. 300-303, 357). Not until April, 1948, long after respondent had entered into the formal agreement with the I.W.A. were petitioners able to persuade the I.W.A. to agree that petitioners might, temporarily at least, have the work of loading barges (R. 391-397). Respondent's refusal at such time to yield to petitioners' demands cannot be deemed a breach by respondent of the alleged "commitment" made many months before.

Requested instruction 2 dealt entirely with whether respondent unjustifiably or unreasonably refused to bargain with the I.W.A. and not with the relations between respondent and petitioners. The court properly refused to give the instruction for the following additional reasons:

1. There Was No Evidence from Which the Jury Could Find That Respondent Refused to Bargain with I.W.A.

The proposed instruction assumed as a fact that the I.W.A. had "demanded" that respondent turn over the work of loading barges to Local 16 and that refusal to accede to such "demand" in itself constituted a "refusal to bargain." The only question left open was whether respondent's refusal to turn over the loading of barges to Local 16 was unreasonable or unjustifiable in view of the policy of the Act to avoid economic strife and warfare.

As already shown, I.W.A. never "demanded" that respondent turn over the loading of the barges to Local 16. It merely agreed that respondent might comply with Local 16's demand (R. 393-397). In reality there was no dispute between respondent and the I.W.A. The dispute was wholly between respondent and petitioners.

There is no evidence whatever that respondent at any time refused to bargain with the I.W.A. Petitioners call attention to only one instance in which respondent failed to attend a meeting at which the I.W.A. was present (Br. 91). This meeting was called not by the I.W.A., but by Leonard Evans, a representative of the United States Department of Labor. Respondent had met with Evans many times before (R. 986-987). Evans concededly was not familiar with the rights and responsibilities of respondent and petitioners under the National Labor Relations Act (R. 992-994). Evans was attempting to reach any agreement without respect to the rights and responsibilities of respondent and petitioners under the N.L.R.A.

(R. 989-990). Quite understandably there was a limit to what Evans could hope to accomplish with such an attitude. Respondent's failure to discuss further with him its rights and responsibilities cannot be construed as a failure to bargain with the I.W.A.

Since respondent at no time refused to meet with the I.W.A. at its request, there was no basis in the evidence for giving petitioners' requested instruction.

Even if it be assumed that the I.W.A. did "demand" that respondent assign the work of loading barges to longshoremen, the failure of respondent to accede to such demand does not in itself constitute a refusal to bargain. The Act itself provides that the duty to bargain collectively imposed upon employers and representatives of employees alike by the Act does not compel either party to agree to a proposal or require the making of a concession. N.L.R.A. Sec. 8(d) U.S.C. Sec. 158.[65] The nature of petitioners' demand was such that no compromise was possible. Petitioners never indicated that they would yield one inch from their basic demand for the work of loading barges (R. 521-528). The I.W.A. obviously was in no position to discuss a compromise of petitioners' demand

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[65]Section 8(d) provides in part:

"(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, *but such obligation does not compel either party to agree to a proposal or require the making of a concession* * * *" (Emphasis supplied.)

2. The Evidence Established Affirmatively That Respondent Was Not Required to Bargain With the I.W.A. with Respect to the Assignment of the Work of Loading Barges.

Even assuming that there was any evidence from which the jury could have found that respondent refused to bargain with the I.W.A. with respect to the question of who should load respondent's barges, the granting of requested instruction 2 still would have been improper. Section 8(d) of the National Labor Relations Act, as amended, after defining the term "to bargain collectively", provides:

> "That where there is in effect a collective bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—
>
> (1) Serves a written notice upon the other party to the contract of the proposed termination or modification 60 days prior to the expiration date thereof * * *"

Section 8(d) provides further:

> "The duties imposed * * * by paragraphs (2)-(4) of this subsection * * * shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract."

Paragraphs (2)-(4) deal with each party's duties with respect to bargaining for a new contract or the modification of an existing contract.

Quite apparently the quoted provisions were designed to assure each party to a collective bargaining agreement that it could rely upon the terms of such agreement for a definite period of time.

Respondent's agreement with the I.W.A. provided that it should remain in force until April 1, 1948, and thereafter for yearly periods until written notice of termination or revision had been given by either party (R. 134). There was no evidence that the I.W.A. at any time notified respondent in writing that it wished to modify or terminate its contract. The agreement provided for wages, hours of labor, seniority, holidays and the like for all employees, including the employees assigned the work of loading barges (R. 132-134, 197, 300-303, 357). Respondent was entitled to rely upon the I.W.A. contract as settling the conditions of employment, including the conditions pertaining to the work of loading barges, which would obtain in its mill until such approprate time as the I.W.A. notified respondent formally that it wished to modify the agreement.** Since there was no request for modification as required by Section 8(d), the trial court could not properly have given petitioners' requested instruction.

**Respondent was not required or permitted to deal with petitioners until such time as they represented a majority of the men performing the work of loading barges and until the board had certified that the employees who loaded the barges constituted an appropriate unit for collective bargaining purposes. N.L.R.A., Sec. 9(a), (b).

3. The Instruction Would Have Led the Jury to the Erroneous Conclusion That Respondent's Refusal to Assign the Work of Loading Barges to Local 16 Constituted an Unreasonable or Unjustifiable Refusal to Bargain Simply Because Such Refusal Led to Economic Strife and Warfare.

Proposed instruction 2 recited that "the Taft-Hartley Act was enacted in the interests of public policy to avoid economic strife and warfare." The instruction then stated if the jury found that the refusal of respondent to accede to the demand of the I.W.A. to turn over the loading of barges to Local 16, was unreasonable or unjustifiable, "in view of that provision," plaintiff would not be entitled to recover any damage it may have sustained on such account. Clearly the effect of this instruction, if given, would have been to lead the jury to believe that the refusal on the part of respondent to assign the work of loading barges to Local 16 constituted an unreasonable or unjustifiable refusal to bargain simply because such refusal led to economic strife and warfare. Actually Section 1(b) of the Act makes clear that the purpose of the Act to further the policy of preventing economic strife and warfare is to be accomplished by insuring that both employers and employees refrain from interfering with the legitimate rights of others. For a very obvious reason petitioners did not propose to tell the jury what were the legitimate rights and duties of petitioners and of respondent as provided by the Act. Petitioners were interfering with the legitimate rights of respondent and the I.W.A., whereas respondent was acting in accordance with its rights under the Act.

4. Respondent Would Have Been Guilty of an Unfair Labor Practice Had It Assigned the Work of Loading Barges to Longshoremen.

Requested instruction 2 ignored the fact that respondent would have been guilty of an unfair labor practice had it assigned the work of loading barges to the longshoremen.[67]

N.L.R.A., Section 8(a) provides:

> "It shall be an unfair labor practice for any employer * * *
>
> "(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *"

Respondent hired all of its employees without regard to their membership in any labor organization (R. 123). So far as respondent knew no individual longshoreman ever sought employment from respondent (R. 123-124). Had respondent discharged the employees who performed the work of loading barges because they were members of the I.W.A. and not of Local 16 and hired only longshoremen to do such work, it obviously would have encouraged membership in petitioners' union thereby and discouraged membership in the I.W.A. and would have been guilty of an unlawful act. *Phelps Dodge Corp. v.*

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[67] That respondent could not lawfully take work away from members of the I.W.A. and give it to members of Local 16 was an important reason why respondent refused to accede to petitioners' demand (R. 306). In addition respondent did not wish to establish a precedent which might encourage unions representing none of respondent's employees to attempt to force the I.W.A. to yield fragments of its jurisdiction (R. 263).

N.L.R.B., 313 U.S. 177, 61 S.Ct. 845.** Had respondent bargained with petitioners as to the working conditions of persons loading barges while petitioners did not represent any of such persons, it would have been guilty of an unfair labor practice. *May Department Stores Co. v. N.L.R.B.*, 326 U.S. 376, 383-84, 66 S.Ct. 203, 208.

Clearly a person who is injured by the tort of another is not required to do an unlawful act in order to mitigate damages. Restatement of Torts, Sec. 918, comment (h). *Missouri Pacific v. Baker*, 188 Ark. 143, 64 S.W. (2d) 321; *J. M. Huber Petroleum Company v. Yake*, 121 S.W. (2) 670 (Tex. App.).

The two cases cited by petitioners (Br. 94-96) involved breaches of employer-union contracts by longshoremen, not intentional torts. In each of those cases the employers could have acceded to the demands of the union while awaiting a decision without violating the law and without prejudicing either their own rights or the rights of others. These cases thus have no application to this case.

**Petitioners argue (Br. 96) that respondent could not have violated the Act by yielding to their demand since Section 10(k) contemplates voluntary adjustments of disputes by the parties themselves. But it does not follow that the parties could agree to a course of action which would lead to discrimination against individual employees.

CONCLUSION

Petitioners have failed to advance any substantial basis for their distorted construction of the statute. Their arguments are based primarily upon vague predictions of difficulties which might be encountered in hypothetical cases if the National Labor Relations Board and the Courts should reach contrary conclusions as to the ones entitled to disputed work. No such conflicts have yet arisen, nor can they arise in the future. Since petitioners have likewise failed to show any error in the proceedings below, the judgment should be affirmed.

Respectfully submitted,

CHARLES A. HART,
Counsel for Respondent.

MANLEY B. STRAYER,
JAMES P. ROGERS,
HART, SPENCER, MCCULLOCH, ROCKWOOD AND DAVIES,
FAULKNER, BANFIELD AND BOOCHEVER,
Of Counsel.

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NO. 230

In the Supreme Court of the United States

OCTOBER TERM, 1951

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION AND INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, LOCAL 13,
Petitioners,

v.

JUNEAU SPRUCE CORPORATION

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 280

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION AND INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, LOCAL 16, *Petitioners*

v.

JUNEAU SPRUCE CORPORATION

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

OPINION BELOW

The opinion of the District Court for the Territory of Alaska, rendered upon petitioners' motions

and demurrers, is reported at 83 F. Supp. 224. The opinion of the Court of Appeals (R. 1106) is reported at 189 F. 2d 177.

JURISDICTION

The jurisdiction of this Court is invoked under Section 1254 (1) of Title 28 U. S. C. On October 22, 1951, this Court granted the petition for a writ of certiorari.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended, are set forth in the Appendix, *infra*, pp. 24-26.

QUESTION PRESENTED

This brief is addressed solely to petitioners' contention that a strike for an object proscribed by Section 8 (b) (4) (D) of the National Labor Relations Act does not violate that Section unless the strike has been preceded by Board determination, made pursuant to Section 10 (k), of the underlying jurisdictional dispute, adverse to the striking union.

STATEMENT

The instant case arises out of a suit for damages brought by respondent Corporation against petitioners in the District Court of the Territory of Alaska under Section 303 (a) (4) and 303 (b) of the Labor Management Relations Act, 1947. In substance, the complaint alleged and the support-

ing evidence showed, as fully set forth in the briefs of the parties (Pet. Br. 6-15; Resp. Br. 4-12), that petitioners injured the Corporation in its business and property by picketing the Corporation's place of business from April 10, 1948 to May 9, 1949, and thereby inducing or encouraging the employees of the Corporation to engage in a strike or concerted refusal in the course of their employment to perform services for the Corporation, in order to force or require it to assign certain barge loading work to members of petitioner Local 16 rather than to employees of the Corporation who were members of another labor organization. The district court held that petitioners had violated Section 303 (a) (4) by picketing the Corporation's premises during the stated period and entered judgment against petitioners for $750,000 for damages suffered by the Corporation during that period. The court below affirmed the judgment.

Petitioners contend that Section 303 (a) (4) of the Labor Management Relations Act proscribes the same conduct as Section 8 (b) (4) (D) of the National Labor Relations Act and that both Section 303 (a) (4), and Section 8 (b) (4) (D), should be read as rendering illegal only such picketing by petitioners as took place after and in the face of the determination by the National Labor Relations Board on April 1, 1949, pursuant to the provisions of Section 10 (k) of the National Labor Relations Act, that the members of Local 16 were not entitled

to the work in dispute. Petitioners assert that the trial court erred in awarding damages for picketing which preceded the Board's determination of dispute.

The same events which gave rise to the instant action for damages were considered by the National Labor Relations Board in two proceedings, one under Section 10 (k) and the other under Section 10 (b) and (c) of the National Labor Relations Act. Because these proceedings are relevant to petitioners' present contentions based upon Section 10 (k) and 8 (b) (4) (D) of the Act, we summarize them here.

A. The Board's Determination of Dispute Under Section 10 (k) of the Act

In August and September, 1948, the Corporation filed charges with the Board alleging, *inter alia*, that petitioner Local 16 had engaged in unfair labor practices, within the meaning of Section 8 (b) (4) (D), by picketing the Corporation's operations and thereby inducing and encouraging its employees to engage in a strike or concerted refusal to perform services in the course of their employment, in order to force the Corporation to assign certain barge loading work to members of Local 16 instead of to the Corporation's employees who were members of another union. The Board's regional director investigated the charges. Upon that investigation he concluded that there was reasonable cause to believe that the charges were true

and, pursuant to the Board's Rules and Regulations, he thereupon served notice on the interested parties that the charges had been filed and that a hearing would be conducted pursuant to Section 10 (k) of the Act on the dispute out of which the alleged unfair labor practices had arisen. Thereafter, the Board, pursuant to Section 10 (k), proceeded to hear and determine the dispute out of which the alleged unfair labor practices had arisen. The Board's determination of the dispute and its subsidiary findings of fact may be summarized as follows (82 NLRB 650):

In May, 1947, the Corporation purchased from Juneau Lumber Mills, Inc., a sawmill and planing mill at Juneau, Alaska. During the same month, the corporation rehired all the mill employees of its predecessor and began operations. Later that year the Corporation acquired a seagoing barge for use in transporting lumber to points in Canada and the United States and in October it began using its millyard workers to load lumber on the barge. These employees were members of the International Woodworkers of America, Local No. M-271. In November, 1947, the Corporation formally recognized the Woodworkers as the bargaining representative of its millyard workers and entered into a collective bargaining agreement.

Meanwhile, in October, 1947, petitioner Local 16 learned that the Corporation's mill workers were loading the barges. It notified the Corporation

that such work "belonged" to it and that its members should be assigned to the work of loading barges. Local 16 at this time and at all times thereafter had no members among the Corporation's employees. The Corporation refused to accede to this demand and in February, 1948, Local 16 established a picket line at the Corporation's operations at Juneau. The mill employees refused to cross the picket line and all mill operations thereupon ceased.

In July, 1948, the Woodworkers authorized its members to return to work despite the picket line and the mill employees accordingly resumed work. Local 16 continued to picket the Corporation's premises.

In August, 1947, the Corporation moved a load of lumber by tug and ocean-going barge from Juneau where it had been loaded by the millyard employees. When the barge and cargo arrived at Prince Ruppert, British Columbia, members of a sister local of Local 16 refused to unload it because it had come from behind a picket line. The barge was then moved to a port in the United States where it was unloaded.

On the record before it, summarized above, the Board found that there was reasonable cause to believe that the picketing engaged in by Local 16 constituted an unfair labor practice within the meaning of Section 8 (b) (4) (D) of the Act and that it therefore was empowered, as provided in Section 10 (k), to hear and determine the jurisdic-

tional dispute out of which the alleged unfair labor practices had arisen. The Board concluded and determined that Local 16 was not lawfully entitled to require the Corporation to assign the work in dispute to members of Local 16 rather than to employees of the Corporation who were members of the Woodworkers. The Board's Decision and Determination of Dispute, containing these findings and conclusions was issued on April 1, 1949.

B. The Board's Decision and Order Under Section 10 (b) of the Act

After the Board had issued its Determination of Dispute, as set forth above, Local 16 failed and refused to comply with that determination and continued to picket the Corporation's premises at Juneau in support of its demand that the barge loading work be assigned to its members. On April 28, 1949, the General Counsel of the Board issued a complaint, as provided in Section 10 (b) of the Act, alleging, *inter alia,* that Local 16 had violated Section 8 (b) (4) (D) of the Act by picketing the Corporation's premises for the stated purpose. Thereafter, on August 7, 1950, the Board, upon the usual proceedings under Section 10 of the Act, issued its findings of fact, conclusions of law, and order which are reported at 90 NLRB 1753. The subsidiary facts found by the Board in this proceeding were substantially the same as those previously found in the proceeding under Section 10 (k). The Board further found that Local 16 had refused to comply with the See-

tion 10 (k) determination of the jurisdictional dispute. Upon these facts the Board concluded that Local 16 had violated Section 8 (b) (4) (D) by picketing the Corporation's premises and thereby inducing and encouraging the Corporation's employees to engage in a concerted refusal in the course of their employment to perform services for the Corporation, with the object of forcing the Corporation to assign the barge loading work to members of Local 16 instead of to the mill and millyard employees of the Corporation.

The Board's order required Local 16, *inter alia*, to cease and desist from the unfair labor practices found.

ARGUMENT

This case presents questions of the construction and application of Sections 303(a)(4) and 303(b) of the Labor Management Relations Act, authorizing suits for damages by injured employers. Petitioners' argument rests in part, however, on an asserted analogy to Sections 8(b)(4)(D) and 10(k) of the Act relating to proceedings by the Board. The Board takes no position on the question whether the limitation, contained in Section 10(k), upon the power of the Board to proceed in Section 8(b)(4)(D) cases in the absence of a showing of noncompliance with the Board's jurisdictional dispute determination can or should be deemed to limit the power of the district courts, under Section 303(b) of the Labor Management Relations Act, to award damages in cases arising

under Section 303(a)(4) of that Act. But because the parties have sought to raise questions of the construction and application of Sections 8(b)(4)(D) and 10(k) of the Act, the Board wishes to make known its views on these questions.

Section 8(b)(4)(D) defines as unfair labor practices certain types of strikes arising out of jurisdictional disputes between unions. Section 10(k) provides a special procedure for expeditious settlement of such jurisdictional disputes. Petitioners' contention is that no violation of Section 8(b)(4)(D) can occur until the Board has made a determination of the jurisdictional dispute pursuant to Section 10(k). For reasons which we shall develop in this Memorandum, the Board believes that petitioners' contention is untenable and would in effect write both Section 10(k) and Section 8(b)(4)(D) out of the Act.

[redacted]

The Board is empowered to hear and determine a jurisdictional dispute under Section 10(k) only if it has cause to believe that the dispute has already given rise to an unfair labor practice within the meaning of Section 8(b)(4)(D).[1]

[1] *Herzog* v. *Parsons*, 181 F. 2d 781 (C. A. D. C.), certiorari denied, 340 U. S. 810; *LeBaron* v. *Los Angeles Building Trades Council*, 84 F. Supp. 629, 633 (S. D. Cal.), affirmed, 185 F. 2d 405 (C. A. 9), judgment vacated on ground of mootness, October 8, 1951, No. 31, this Term; *Winslow Bros. and Smith Co.*, 90 NLRB 1379; *Ship Scaling Contractors Association*, 87 NLRB 92, 93.

Thus, if, as a matter of law, no such unfair labor practice could arise prior to a Board determination of the dispute, no Section 10 (k) determination could ever be made, for, at that stage, the requisite belief that an unfair labor practice had occurred could not be entertained. And since, on petitioners' theory, a Section 10 (k) determination is a prerequisite to the existence of a violation of Section 8 (b) (4) (D), if no Section 10 (k) determinations could be made, no violations of Section 8 (b) (4) (D) could occur. Avoidance of these stultifying consequences is of manifest importance to the administration of the National Labor Relations Act.

In the Board's view Section 10 (k) was designed to facilitate adjustment of jurisdictional disputes which have already given rise to strikes in violation of Section 8 (b) (4) (D). Such adjustment of the underlying dispute, when accepted by the parties concerned, constitutes an alternative, and more expeditious, method than conventional unfair labor practice proceedings, for eliminating such strikes in the future. Recognizing this, Congress provided that in Section 8 (b) (4) (D) cases the alternative adjustment procedure should first be exhausted and that only if that procedure proves unsuccessful should the Board proceed conventionally pursuant to Section 10 (b) to remedy the unfair labor practice. In this view Section 10 (k) does not constitute a modification of the unfair

labor practice defined in Section 8 (b) (4) (D), but rather imposes a limitation upon the power of the Board to remedy such unfair labor practices pursuant to Section 10 (b) and (c). This construction alone, we submit, is compatible with the terms of the Act, and the objectives of Congress.

I. The Language and Structure of the Statute Are Incompatible With the Assumption That Violations of Section 8 (b) (4) (D) May Occur Only After the Board Has Determined the Underlying Jurisdictional Dispute Pursuant to Section 10 (k)

In Section 8 (b) (4) (D) Congress defined as an unfair labor practice by a labor organization a strike designed to force or require "any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class." The proviso to that Section exempts such strikes only where the *employer involved* "is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work."

Nothing in the broad language of this prohibition suggests that unless it is preceded by a Board determination a strike for the forbidden object is immune. And the proviso's exemption of such strikes only when they occur after a Board determination to which the employer has failed to conform demonstrates that illegality does not depend

upon the existence of a Board determination. Petitioners' view would completely transform the proviso by, in effect, substituting for the phrase "unless such employer is failing, etc.", the phrase, "only if such labor organization is failing."

The procedure adopted for remedying violations of Section 8 (b) (4) (D) confirms the view that Congress did not intend to defer prohibition of jurisdictional strikes until the Board had resolved the underlying disputes pursuant to Section 10 (k). Proceedings in Section 8 (b) (4) (D) cases, as in the case of other unfair labor practices, are initiated by the filing of charges with the Board pursuant to Section 10. Section 10 (k) provides:

> *Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph 4 (D) of section 8 (b)*, the Board is empowered and directed to hear and determine *the dispute out of which such unfair labor practice shall have arisen*, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed. [Italics added.]

Thus, until a violation of Section 8 (b) (4) (D) has been charged the Board is without power to hear and determine the jurisdictional dispute. The provision for the filing of charges obviously contemplates that an unfair labor practice, on which such charges could be based, may already have occurred. And the use of the past tense in the italicized phrase which authorizes the Board to hear and determine the dispute out of which "such unfair labor practice shall have arisen," demonstrates beyond doubt that Congress assumed that an unfair labor practice may have occurred prior to the Board's determination of the jurisdictional dispute.

Moreover, the Board and the courts have held that the Board may not proceed to hear and determine a jurisdictional dispute pursuant to Section 10 (k) unless, after administrative investigation, there is reasonable cause to believe that the charge alleging that a violation of Section 8 (b) (4) (D) has occurred is true. The Board's Rules and Regulations (Series 6), provide (Section 101.29-101.31) that when an 8 (b) (4) (D) charge is filed, the Regional Director shall investigate such charges in the same manner as other unfair labor practice charges. If his investigation discloses that there is merit to the charge, he is authorized to issue a notice of Section 10 (k) hearing which is served on all parties to the jurisdictional dispute out of which the unfair labor practices are alleged

to have arisen. In *Herzog* v. *Parsons*, 181 F. 2d 781, 784 (C. A. D. C.), certiorari denied, 340 U. S. 810, the court said:

> * * * the Board may not hear and determine a dispute under 10 (k) unless an 8 (b) (4) (D) violation has resulted. The existence of an unfair labor practice within the meaning of 8 (b) (4) (D) is a *sine qua non* to the Board's power to hear and determine such a dispute. A mere charge of an 8 (b) (4) (D) violation does not, *ipso facto*, operate to give verity to the existence of such an unfair labor practice. Thus before the Board may proceed to a hearing it must determine whether in fact the dispute does give rise to the 8 (b) (4) (D) violation, and, in order to make this determination, it must conduct a preliminary investigation. This is the only rational construction that can be made of the language of 10 (k) itself.[2]

And in *LeBaron* v. *Los Angeles Building Trades Council*, 84 F. Supp. 629, 635 (S. D. Cal.), affirmed,

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[2] The quoted language appears to require qualification in that the Board's administrative investigation leads only to determination whether reasonable cause exists to believe that a violation has been committed, not to final determination whether a violation has in fact occurred. The issue on the merits is reserved for further proceedings under Section 10 (b). With this qualification, however, the statement is in accord with the Board's view that it may proceed to a 10 (k) hearing only after preliminary investigation discloses probable cause to believe the charge true.

185 F. 2d 405 (C. A. 9), judgment vacated on ground of mootness, October 8, 1951, No. 31, this Term, the district court said: "The action of the Board, in making a determination under the provision of Section 10 (k) of the Act, is a confirmation of the existence of reasonable cause to believe that the charge is true." See also, *Ship Scaling Contractors Association*, 87 NLRB 92, 97; *Winslow Bros. and Smith Co.*, 90 NLRB 1379, 1383; *Teleprompter Service Corp.*, 95 NLRB No. 199.

To achieve exemption from the reach of Section 8 (b) (4) (D), of jurisdictional strikes which precede Board determination of the underlying dispute petitioners rely upon the directive in Section 10 (k) that "Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed." Petitioners find in this provision, which qualifies the Board's normal procedure for remedying unfair labor practices under Section 10, a substantive modification of the unfair labor practice defined in Section 8 (b) (4) (D).

The mandatory dismissal of charges upon voluntary adjustment of the dispute or compliance with the Board's determination does no more than effectuate the objectives of Congress in establishing, in Section 10 (k), an alternative, and more expeditious, method than the usual unfair labor practice proceeding for ending jurisdictional

strikes. The function of Section 10 (k) proceedings is to expedite adjustment of the disputes which give rise to the strikes prohibited by Section 8 (b) (4) (D). It affords first the parties themselves, and then the Board, an opportunity to resolve the underlying issues. If this procedure is successful in adjusting the basic dispute, thereby eliminating the danger of future unfair labor practices, conventional remedial proceedings are pretermitted. *Juneau Spruce Corp.*, 82 NLRB 650, 655-656. Obviously, this provision for mandatory dismissal of charges does not imply that no violation of Section 8 (b) (4) (D) could have occurred; it implies at most that the violation of that Section which may have occurred has adequately been remedied. If the Section 10 (k) procedure is unsuccessful in eliminating the basic dispute, the Board proceeds conventionally to remedy the unfair labor practice, and, as in this very case, *supra*, pp. 7-8, its unfair labor practice findings may be based on conduct which preceded, as well as that which followed, its Section 10 (k) determination.

Petitioners' construction, moreover, is incompatible with the objectives of Congress in extending the provisions for interim injunctive relief under Section 10 (l) to cases arising under Section 8 (b) (4) (D). Section 10 (l) requires that priority be given to the preliminary investigation of charges alleging violation of Sections 8 (b) (4)

(A), (B) and (C), and further directs the officer to whom the matter has been referred, if he "has reasonable cause to believe that such charge is true and that a complaint should issue," to apply for appropriate injunctive relief "pending the final adjudication of the Board with respect to such matter." The concluding sentence of Section 10(l) provides: "In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b)(4)(D)."

Senator Ellender, a member of the Conference Committee, explained this provision on the floor of the Senate as follows (2 Legislative History of the Labor Management Relations Act, 1947, p. 1068, 93 Cong. Rec. 4138):

> As I pointed out a while ago, * * * jurisdictional strikes are treated as unfair labor practices. Should a complaint be made by an employer, all he would have to do, in effect, would be to let it be known, and the local attorney in the regional office would have the power to make a quick investigation. If he should find that there was a jurisdictional strike in progress or in the offing, he could investigate. If in his judgment it would cause irreparable injury to the employer, he would have the right to go into court and obtain an injunction. He could obtain a cease-and-desist order. If perchance the union should continue its illegal

> conduct it could be punished. Its officers could be cited for contempt of court.

Senator Ellender's remarks confirm the plain implication of the text of Section 10(l), namely, that Congress intended to authorize interim injunctive relief against jurisdictional strikes, and to make such relief available promptly upon the filing of a charge after the regional officer's investigation revealed reasonable cause to believe that the charge was true. Nothing in the text or legislative history of the Act suggests that Congress intended to postpone the availability of such relief until after the Board had conducted a hearing under Section 10(k) and made its determination of the underlying dispute. Indeed, petitioners concede (Br. pp. 38-39, n. 21), that injunctive relief may properly be obtained prior to the Board's Section 10(k) determination. Yet, if petitioners' theory were adopted injunctive relief could not be obtained in Section 8(b)(4)(D) cases until the Section 10(k) procedure had been exhausted.

II. Petitioners' Construction of Sections 8 (b) (4) (D) and 10 (k) Is Not Supported by the Decisions of the Board Upon Which Petitioners Rely

Petitioners assert (Br. 24-31) that the Board has consistently held that "a strike, within the plain terms of Section 8(b)(4)(D), which occurs prior to a Board determination under Section 10(k), does not constitute a violation of Section 8(b)(4)(D)." In support of this assertion peti-

tioners rely particularly upon the Board's decisions in *Juneau Spruce Corp.*, 82 NLRB 650 and 90 NLRB 1753, *Irwin-Lyons Lumber Co.*, 83 NLRB 341[3] and *Westinghouse Electric Corp.*, 94 NLRB No. 63. In none of these cases did the board so hold.

In the first *Juneau Spruce* case it was urged by the employer that it was unnecessary for the Board to make any jurisdictional dispute determination under Section 10(k)[4] and that since the

[3] The quotation from this case which appears at pp. 28-29 of petitioners' brief appears in the Board's decision and order denying motion for rehearing which is reported at 83 NLRB 341, and not in 82 NLRB 916, as cited by petitioners.

[4] In that case, as in this one, see pp. 4-7, *supra*, the employer had assigned the work in issue to one group of employees and the labor organization involved struck to compel the employer to assign the work to another group. In such cases the Board unanimously holds that Sections 8(b) (4) (D) and 10(k) do not authorize the Board "to deprive an employer of the right to assign work to his own employees" and that for this reason "the employer in most cases will have resolved by his own employment policy, the question as to which organization shall be awarded the work." *Westinghouse Electric Corp.*, 83 NLRB, at 481, and cases cited. In the *Juneau Spruce* case two Members of the Board, Messrs. Houston and Murdock, agreed with the employer's contention that because the Board's Section 10(k) determination could do no more than confirm the employer's prior resolution of the "jurisdictional" issue, against which the strike in violation of Section 8(b)(4)(D) had occurred, the Board "should eschew the pretense of *deciding* such matters under Section 10(k) of the Act," and proceed instead immediately to the conventional remedy through Section 10(b) proceedings (*ibid.*).

The only cases in which the Board will undertake in a Section 10(k) proceeding to overrule an employer's award of work

evidence presented in the Section 10(k) hearing contained all the elements necessary to show that an unfair labor practice under Section 8(b)(4)(D) had been committed, the Board should proceed forthwith to hear and remedy the unfair labor practice pursuant to Section 10(b) and (c). Answering this contention, the Board held that under the express terms of Section 10(k) the Board must first attempt to resolve the underlying jurisdictional dispute by means of a Section 10(k) determination, and that an unfair labor practice complaint should issue only in the event of noncompliance with that determination. In the second *Juneau Spruce* case the Board, consistently with the provisions of Section 10(k) which require the

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assignments to one group of employees rather than another are those in which the group denied the work either has an existing contract or has received a Board certificate or order which entitles it to the work. *Teleprompter Service Corp.*, 95 NLRB No. 199; *Juneau Spruce Corp.*, 82 NLRB 650. The only cases in which the Board will determine a jurisdictional dispute *ab initio*, in terms of industry custom, or tradition, for example, are those in which the employer takes no position as to which of two labor organizations, both representing persons in his employ, shall be entitled to the work, thereby, in effect, voluntarily yielding to the Board the employer's right to make the work assignment. That was the situation in *Winslow Bros. & Smith Co.*, 90 NLRB 1379, upon which petitioners rely (Br. pp. 42, 49, 50). See also, *Irwin-Lyons Lumber Co.*, 82 NLRB 916; *Middle States Telephone Co.*, 91 NLRB 598. For the convenience of the Court we have listed in Appendix B, *infra*, all of the jurisdictional dispute cases dealt with by the Board under Sections 10(k) and 8(b)(4)(D).

dismissal of charges alleging violations of Section 8(b)(4)(D) if there has been compliance with a Section 10(k) determination, merely held that a showing of non-compliance with such a determination was essential to a *finding* that a violation of Section 8(b)(4)(D) had occurred (*cf.* Petitioners' brief, p. 29). In the *Irwin-Lyons* case the Board stated that a Section 10(k) hearing is a non-adversary proceeding involving only a preliminary administrative determination for the purpose of resolving the jurisdictional dispute and that the unfair labor practice charges which empower the Board to make that determination are to be litigated in a subsequent adversary hearing under Section 10(b) of the Act in the event the underlying dispute remains unresolved. None of these cases even remotely suggests that the Board was enunciating the proposition which petitioners seek to attribute to it.

In the *Westinghouse* case, after the labor organization involved had been charged with violating Section 8(b)(4)(D), the Board conducted a hearing pursuant to Section 10(k) and issued its Decision and Determination of Dispute, 83 NLRB 477. Thereafter, the General Counsel of the Board issued a complaint alleging that the union had engaged in unfair labor practices in violation of Section 8(b)(4)(D). The complaint did not allege that the union had failed to comply with the Board's Determination of Dispute, and no evi-

dence as to compliance or non-compliance was adduced at the hearing. In its initial decision, 88 NLRB 1101, the Board construed the directive in Section 10(k)—that upon compliance with the Board's determination the charge should be dismissed—as imposing upon the General Counsel, in proceedings under Section 10(b), the burden of proof of non-compliance. The Board remanded the case to the trial examiner to afford the General Counsel an opportunity to allege and prove noncompliance. Following the proceedings on remand, the Board found that the General Counsel had failed to prove that the union had not complied with the Board's determination and therefore dismissed the complaint.

Manifestly, this holding does not imply that the Board deems proof of noncompliance a prerequisite to the existence of a violation of Section 8 (b) (4) (D). It demonstrates, rather, that the Board considers the directive to dismiss charges upon compliance as a limitation upon its authority to proceed under Section 10 (b) to *remedy* violations of Section 8 (b) (4) (D). Thus, as we have seen, pp. 7-8, 16, *supra*, where noncompliance is shown in Section 10 (b) proceedings the Board bases its findings upon conduct which preceded as well as that which followed its determination under Section 10 (k), and the General Counsel, in the *Westinghouse* case itself, *supra*, as well as in other

cases[5] has applied for injunctive relief under Section 10(l) before the Board made its Determination of Dispute under Section 10 (k).

CONCLUSION

For the reasons set forth above, this Court should not hold that no violation of Section 8 (b) (4) (D) can occur until the Board has made a determination of the jurisdictional dispute pursuant to Section 10 (k).

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

GEORGE J. BOTT,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
MOZART G. RATNER,
Assistant General Counsel,
DOMINICK L. MANOLI,
Attorney,
National Labor Relations Board.
DECEMBER, 1951.

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[5] *Brown* v. *Roofers & Waterproofers Union*, 86 F. Supp. 50 (N. D. Calif.); *Brown* v. *Longshoremen's Union* (N. D. Calif.), 27 LRRM 2410; *Shore* v. *Local 596, International Brotherhood of Electrical Workers* (D. W. Va. Jan. 10, 1950; unreported); *Brown* v. *Local 48, International Longshoremen's Union* (D. Oreg., March 15, 1951; unreported).

APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. IV, 151, *et seq.*), are as follows:

Sec. 8. * * *

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents— * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: * * *

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: * * *.

Sec. 10. * * *

* * * * *

(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8 (b),

the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction

to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: * * * In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D). * * *

APPENDIX B

Section 10 (k) Cases decided by the Board

Moore Drydock Co., 81 NLRB 1108
Juneau Spruce Corp., 82 NLRB 650
Irwin-Lyons Lumber Co., 82 NLRB 916, 83 NLRB 341
Westinghouse Electric Corp., 83 NLRB 477
Ship Scaling Contr. Ass'n., 87 NLRB 92
Stroh Brewery, 88 NLRB 844
Albers Milling Co., 90 NLRB 1015
Winslow Bros., 90 NLRB 1379
Middle States Telephone Co., 91 NLRB 598
New London Mills, 91 NLRB 1003
Lumber Dealers, 92 NLRB 632
Direct Transit, 92 NLRB 1752
Teleprompter Service Corp., 95 NLRB, No. 199
Manhattan Construction Co., 96 NLRB, No. 160

Section 8 (b) (4) (D) cases decided by the Board

Westinghouse Electric Corp., 88 NLRB 1101, 94 NLRB, No. 63
Juneau Spruce Corp., 90 NLRB 1753

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